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FOR

THE YEAR 1884.

CASES RELATING TO

THE POOR LAW, THE CRIMINAL LAW

AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH

The Duties and Office of Magistrates

DECIDED IN THE

QUEEN'S BENCH DIVISION

AND IN THE

COURT FOR CROWN CASES RESERVED,

MICHAELMAS 1883 TO MICHAELMAS 1884.

REPORTED

In the Court for Crown Cases Reserved,

By WALTER HENRY MACNAMARA,

BARRISTER-AT-LAW.

In the Queen's Bench Division,

W. DECIMUS I. FOULKES, J.-H. ETHERINGTON SMITH,
GILBERT GEORGE KENNEDY, RICHARD HOLMDEN AMPHLETT,
FRANCIS PARKER, EDWARD BENNETT CALVERT, AND
GEORGE HUMPHREYS,

BARRISTERS-AT-LAW.

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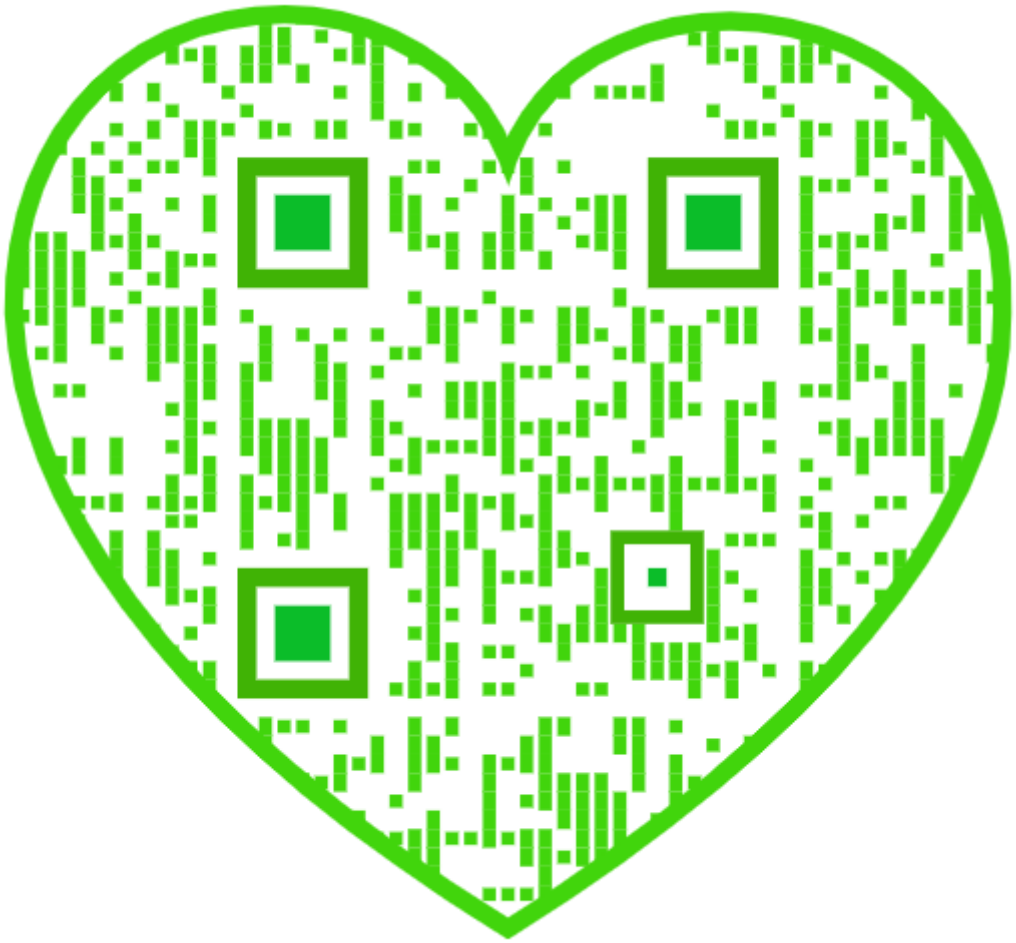

SUPREME COURT OF JUDICATURE.

CASES RELATING TO
THE POOR LAW, THE CRIMINAL LAW,
AND OTHER SUBJECTS
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MICHAELMAS 1883 TO MICHAELMAS 1884.

47 Victoriæ.

[IN THE COURT OF APPEAL.]

1883. Nov. 3, 5. } THE QUEEN *v.* THE RECORDER OF SHEFFIELD.*

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *ss.* 150 *and* 268—*Apportionment of Expenses of Work in Street—Summary Proceedings—Jurisdiction of Justices of Peace—Appeal to Local Government Board.*

In a proceeding by an urban sanitary authority, under section 150 *of the Public Health Act*, 1875, *to recover in a summary manner from a frontager in default the expenses incurred in executing works in a street, the Justices are bound to make an order for payment even though the works were done and the apportionment made on a notice to the owner to pave, &c., as part of a street, land which at the time of such notice was enclosed private land.*

Where the whole expenses have been apportioned on such a notice, the only remedy of the person aggrieved is to appeal to the Local Government Board under section 268, *for the grievance is a wrong order made by the urban sanitary authority, and the Justices have no jurisdiction to enquire whether that order be right or not.*

Judgment of the Queen's Bench Division (52 Law J. Rep. M.C. 78) *affirmed.*

Appeal from a judgment of the Queen's Bench Division. The case is reported 52 Law J. Rep. M.C. 78.

* *Coram* Brett, M.R., and Bowen, L.J.

On the 9th of June, 1879, the stipendiary magistrate for the borough of Sheffield made an order, under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150, adjudging that Bernard Wake should pay to the mayor, aldermen and burgesses of the borough, acting as the urban sanitary authority, the sum of 74*l.* 1*s.* 3*d.* and costs.

The corporation of Sheffield in November, 1879, duly gave notice, under section 150, to Wake and others, as occupiers of premises abutting on "Platt Street" in the borough, to sewer, pave, metal, &c., that street. This notice not having been complied with, the corporation executed the works. The proportion payable by Wake was disputed, and was settled by arbitration in manner provided by the Act, Wake being assessed to the amount of 74*l.* 1*s.* 3*d.*

It appeared from the affidavit of Wake, that at the time of giving the notice, and during the whole of its currency, a portion of the land which he was required to pave, &c., as a part of "Platt Street," consisted of two pieces of land, containing respectively 577 yards and 169 yards, being at that time the property of Messrs. Smith & Redfearn, and in their possession. The plot consisting of 169 yards was enclosed and divided from the part of the street then open by a wall. The rest of the land which Wake was required to pave, &c., as a part of "Platt Street," consisted, in its whole length on the northern side, of land which was the

private property of the Manchester, Sheffield and Lincolnshire Railway Company, and was said to be wholly undedicated to the public. The sum of 74*l.* 1*s.* 3*d.* was a proportion of the whole costs of the works required to be done by the notice of the corporation in "Platt Street," without distinguishing the three pieces of land referred to.

The stipendiary magistrate, in making the order, decided that "Platt Street" was a street, and was not a highway repairable by the inhabitants at large.

The Recorder, on appeal to the Quarter Sessions, affirmed the order of the magistrate, being of opinion that the objection as to Smith & Redfearn's land and the land of the railway company could not be entertained by the magistrate upon an application to order payment of the sum apportioned, but that Wake ought to have appealed to the Local Government Board, under section 268 of the Public Health Act, 1875.

The Recorder having declined to state a Special Case for the opinion of the Queen's Bench Division, a rule *nisi* for a writ of *certiorari* to bring up the order was obtained.

The Queen's Bench Division having discharged the rule, Wake appealed.

Charles, Q.C., and *C. Gould*, for the appellant.—Neither the stipendiary magistrate nor the Recorder had any jurisdiction to make an order for payment, there having been no valid apportionment. The works in question were executed partly upon a public street and partly upon private land; and as the surveyor has made but one apportionment, no order for payment can be made upon it. In *Cook* v. *The Ipswich Local Board* (1) there was an erroneous apportionment, in consequence of which a new apportionment was made. The same course of proceeding should have been adopted here; but, inasmuch as that has not been done, there is no valid apportionment upon which an order for payment can be made. A Court of limited jurisdiction cannot give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; such a decision would be open to review in the Supreme Court—*Bunbury* v. *Fuller* (2). Although Blackburn, J., seemed to think in *Cook* v. *The Ipswich Local Board* (1) that there might be an appeal to the Local Government Board, yet it may be doubted whether any such appeal will lie. Section 268 of the Act of 1875, even if it does give such an appeal, is merely an empowering section, and does not preclude the appellant from pursuing the other remedies given to him. Moreover, the judgment of Blackburn, J., is not quite consistent with his judgment in *Hesketh* v. *The Local Board of Atherton* (3). In *Nesbitt* v. *The Greenwich Board of Works* (4), which turned upon 25 & 26 Vict. c. 102. s. 77, the words of which as to apportionment are identical with those of section 150 of 38 & 39 Vict. c. 55, it was said by Blackburn, J., that the board had authority to apportion the amount, and that if they did it wrongly no appeal lay against the decision; moreover, if the board exceeded its jurisdiction, the apportionment was void, but if it kept within its powers, there was no appeal from a mistake committed by it. Here the board had no jurisdiction to make the expenditure at all; and as the jurisdiction of the magistrate depends entirely upon the fact of the apportionment being a valid apportionment, he had no power to make the order for payment.

The local authority give notice, under section 150, to the owner to execute the works in question, and if that notice is not complied with they may execute the works themselves. The next act is done, not by the local authority, but by the surveyor, who apportions the sum expended as between the different owners. It is very doubtful whether the acts of the surveyor are within section 268; if he makes a wrong apportionment the proper remedy is by arbitration under section 150, and if the sum is wrongly made out the arbitrator

(1) 40 Law J. Rep. M.C. 169; Law Rep. 6 Q.B. 451.

(2) 11 Exch. Rep. 111; 22 Law J. Rep. Exch. 29.

(3) 43 Law J. Rep. M.C. 37; Law Rep. 9 Q.B. 4.

(4) 44 Law J. Rep. M.C. 119; Law Rep. 10 Q.B. 465.

will set it right—*The Queen* v. *The Local Government Board* (5). As the notice refers to expenses incurred upon private lands as well as to those upon the street, it clearly was *ultra vires*. The case of *Hall* v. *Potter* (6) is only an authority to shew that where a notice given by the local authority refers to land, part of which is within and part without their authority, the notice as to the part within their authority is not vitiated if the local authority only execute the work in respect of that part.

The Solicitor-General (*Sir F. Herschell, Q.C.*), (with him *J. E. Barker* and *C. S. Hunter*), for the respondents.—The fallacy in the argument on behalf of the appellant consists in treating the question of a magistrate giving a wrong decision and that of having no jurisdiction as if they were the same. It is true that a magistrate cannot give himself jurisdiction by finding the facts; but the matter in question is left to the decision of the magistrate, just as much as in an action in the County Court, where, even if the Judge comes to a wrong conclusion as to the facts or on the law of the case, it cannot be said that he has no jurisdiction. *Hesketh* v. *The Local Board of Atherton* (3) merely decides that the matter is one which the magistrate might enquire into; and that if he is wrong there is an appeal to the Court of Quarter Sessions; but there the matter stops.

The object of the enquiry is to see whether any debt is due; if there is a dispute as to that, the burden of proving that it does exist rests with the local authority. The question whether the money was wholly expended upon the street cannot be enquired into—*Cook* v. *The Ipswich Local Board* (1). The question of jurisdiction did not arise in *Hesketh* v. *The Local Board of Atherton* (3). [*The Queen* v. *Bolton* (7) was also referred to.]

Charles, Q.C., replied.

BRETT, M.R.—In this case everything that was done was intended to be done under and by virtue of this statute. If the case is within the statute, then the whole course of procedure from beginning to end is pointed out by the statute. The statute imposes upon certain persons liabilities, and also gives to other persons powers and duties which were not known to the common law. It seems to me to follow that where a statute imposes a new liability, and at the same time provides a particular means of enforcing that liability, the only course of procedure is that pointed out by the statute, so long as the case is within it. The course of procedure where the case is within the statute is this—the local authority are first bound to decide whether there shall be an expenditure upon the subject-matter, which in this case was the paving of the street, and then they have to determine what is the proper amount of that expenditure. That amount is then laid, not before the local authority, but before the surveyor, who is bound to apportion the sum among the frontagers according to the measure of their frontages. The surveyor has no authority or power to enquire whether the expenditure was upon a subject-matter within the statute, or whether it was proper or reasonable; he has only to apportion the sum. When the sum so expended and allowed as a whole by the local authority has been apportioned by the surveyor, the local authority are entitled to give notice to each of the frontagers of the amount so apportioned, and to demand payment; and if payment is not made, the local authority are authorised to go before the magistrate and ask for an order for payment. The appellant here upon whom the order was made does not find fault with the act of the surveyor, but with the decision come to by the local authority. It was said that, although the local authority might properly pave the street upon which the appellant was a frontager, and fix the proper and reasonable sum as the amount for it, yet the sum was expended, not upon the street only, but partly upon the street and partly upon private land. The fault found is that the decision of the local authority was wrong to this extent, that they have fixed a wrong sum to lay before the surveyor, because they have not confined the sum to money expended upon the street, but have added a sum which was

(5) 52 Law J. Rep. M.C. 4; Law Rep. 10 Q.B. D. 309.

(6) 39 Law J. Rep. M.C. 1.

(7) 1 Q.B. Rep. 66; 14 Law J. Rep. M.C. 33.

expended upon private land. If the case is within the statute, what is it that the appellant has to complain of? Section 268 provides that any person who deems himself aggrieved by the decision of the local authority in any case in which they are empowered to recover in a summary manner any expenses incurred by them, may, within twenty-one days, address a memorial to the Local Government Board. The appellant deems himself aggrieved by the decision of the local authority: and therefore what he complains of is a grievance, within the exact terms of section 268, caused to him by the decision of the local authority. The power is given to, and the duty imposed upon, the local authority to decide this matter; and the appellant alleges that he has suffered a grievance by their decision. The section points out the course to be followed—namely, that he must appeal to the Local Government Board, and that is the only remedy provided by the statute. If he failed to do so, the magistrate, when the local authority went before him to ask for an order for payment, could not, if the case was within the statute, determine whether the decision of the local authority was right or wrong. The magistrate could only enquire whether the proper notice had been given and order made; and, if so, he could only make the order for payment.

It was said, however, that the magistrate was bound to enquire whether the case was within the statute at all, and that, if the local authority assumed to impose a liability upon a person in respect of something which was not within the statute, then the case was not within the Act at all; and if the magistrate found that is was not, then he had no jurisdiction. But it was said, on the other side, that if the magistrate had to make such an enquiry, he had jurisdiction to enter upon the facts; and if he did so and came to a wrong conclusion, then, inasmuch as he was exercising a summary jurisdiction given by another statute, there is an appeal to the Quarter Sessions, and there the matter ends. It seems to me to be unnecessary, however, to decide either of these two points. It may be that the magistrate has power to enquire whether the case is within the Act at all; and if he has that power, it may be that, if the case is not within the Act, he has no jurisdiction to make any further order. It may be that he is bound to make that enquriy, and that if he comes to a wrong conclusion the only appeal is to the Quarter Sessions. But it may be that he has no power to make that enquiry. It is unnecessary to decide that question at present, because, assuming that the magistrate had jurisdiction to enquire whether the case is within the statute, and that if it was not he had no jurisdiction to make any further order—I am unable, in this case, to come to the conclusion that the matter was wholly without the statute. In that view of the case, if none of the repairs had been done to a "street" within the meaning of the statute, no order could have been made at all. But if any part of the expenditure had been incurred in respect of a street within the meaning of the statute, it is obvious that with regard to that part the local authority might fix upon the proper sum to be apportioned by the surveyor, and after an apportionment had been obtained might make a demand for payment upon the frontager. It cannot here be denied that a part of the expenditure was incurred in respect of that which was a street within the meaning of the statute, and that the appellant was a frontager upon the street. It follows, therefore, that under the statute an order might be made upon him; the order has been made, and the only fault to be found with it is that it was wrongly made.

The case of *Cook* v. *The Ipswich Local Board* (1) is an authority to shew that where an order can be made, but the order is wrong, that is not a defect in the jurisdiction of the magistrate, but an error in judgment in respect of an order within his jurisdiction. The local authority who had power to make the order have made a wrong order, but that is an error in judgment on their part. The magistrate could not enquire into the extent of that grievance; he could only make the order for payment. If the local authority had power to come to the decision at all, the magistrate could not enquire further whether it was right or wrong. The only appeal from that decision, assuming it to have been

The Queen v. *Recorder of Sheffield, App.*

wrong, was to the Local Government Board under section 268.

BOWEN, L.J.—I agree.

Appeal dismissed.

Solicitors—Geare & Son, agents for A. E. Maxfield, Sheffield, for respondents; Richard Smith & Wilmer, agents for John Yeomans, Sheffield, for appellant.

[IN THE HOUSE OF LORDS.]

1883. April 23, 24. THE JUSTICES OF LANCASHIRE *v.* THE MAYOR, ETC., OF ROCHDALE.

Highway—Liability to Repair—Main Road—Portions of a Road ceasing to be Turnpike Road—41 & 42 Vict. c. 77. s. 13.

The Highways and Locomotives Act, 1878 (41 & 42 *Vict. c. 77), s. 13 (which enacts that any road which, after the 31st of December*, 1870, *ceases to be a turnpike road, shall be deemed to be a main road, and makes the county liable for half the expense of repairing such road), is applicable to a road as a whole, and not to part of a road. Therefore, where parts of certain turnpike roads had, upon the extension of the boundaries of a borough in* 1872, *been taken out of the turnpike trusts*,—Held, *that they had not thereby become main roads within the meaning of the section, and that the county was not liable to contribute one-half the expense of their repair.*

This was an appeal from a judgment of the Court of Appeal, which reversed one of the Queen's Bench Division. The case is reported in the Courts below, 50 Law J. Rep. M.C. 97; 51 ibid. M.C. 1; Law Rep. 6 Q.B. D. 525; 8 Q.B. D. 12.

The question to be decided was whether certain portions of road within the town of Rochdale had ceased to be turnpike roads within the meaning of the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), s. 13. The material part of the section is as follows:—

"For the purposes of this Act, and subject to its provisions, any road which has, within the period between the thirty-first day of December, one thousand eight hundred and seventy, and the date of the passing of this Act, ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road, and one half of the expenses incurred from and after the twenty-ninth day of September, one thousand eight hundred and seventy-eight, by the highway authority in the maintenance of such road, shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situate, out of the county rate, on the certificate of the surveyor of the county authority, or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction."

The limits of the town of Rochdale were fixed by the Rochdale Improvement Act, 1853, which appointed commissioners for the purposes of the Act. Sections 47–50 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), were incorporated, whereby the commissioners became the surveyors, and were entrusted with the management, of all highways within the limits of the town, and no tolls were to be collected by any turnpike trustees within the same limits.

The town of Rochdale was incorporated by charter in 1856, and thereupon the corporation succeeded to all the rights, powers and liabilities of the commissioners.

By the Rochdale Improvement Act, 1872, the limits of the borough were enlarged, and it was enacted that all provisions of the Acts relating to the "town" should extend to the borough as enlarged.

The result was that the portions in question of certain turnpike roads came within the limits of the town, and became subject to the provisions of the Towns Improvement Act, 1847, ss. 47–50. The corporation thereupon claimed that they were roads which had ceased to be turnpike roads within the meaning of the Highways and

Locomotives Amendment Act, 1878, s. 13, between the 31st of December, 1870, and the passing of the Act, and that the county was liable to pay half the expenses of their repair.

The facts were stated by consent in a Special Case. The Queen's Bench Division decided in favour of the defendants the county authority, but their decision was reversed in the Court of Appeal.

The defendants appealed.

Gorst, *Q.C.*, and *H. F. Blair*, for the appellants.

Sir H. Giffard, *Q.C.*, and *F. O. Crump*, for the respondents.

LORD BLACKBURN (on April 24).—This case depends upon the construction of a few words in an Act of Parliament, and the words of that Act of Parliament are such as to make it no easy matter to say what the Legislature intended. The general rule of construction of Acts of Parliament is, of course, as every one knows, that we are to give effect to what we understand to be the intention of the Legislature; and we are to derive the intention of the Legislature from the words which they have used, construing them in the sense which such words ought to bear with reference to the subject-matter to which they are applied. That is a very good rule to lay down, but the difficulty always is as to the application of it to the particular case. Now, as to this particular case, what appears to me is this. I think that the fact that Rochdale is a municipal corporation is purely an accident, and that it has nothing to do with the case which we have to consider. But the fact that Rochdale has now an urban sanitary authority within the Public Health Act of 1875 has a great deal to do with the matter, although the fact that it is a municipal borough is not, in my opinion, important.

Now, the first thing which we find is this. Looking at the history of the legislation, in 1853, before Rochdale was ever made into a borough, but when it was only a country town, a Rochdale Improvement Act was passed, which incorporated some clauses of the Towns Improvement Act, 1847, and particularly section 50: "The trustees of any turnpike road shall not collect any toll on any road within the limits of the special Act, or lay out any money thereon." The limits of that special Act are three quarters of a mile round the market-place of Rochdale, which, as I said before, was not at that time a borough. Then, in 1856, Rochdale was incorporated and became a borough, and in consequence of that the powers which had previously been exercised by the commissioners under the Rochdale Improvement Act all came into the hands of the town council of the borough, who were then acting as trustees. Then followed the Rochdale Improvement Act, 1872—it is important to notice the date, 1872. That Act extended the territorial limits of the municipal borough, and made them co-extensive with the boundaries of the Parliamentary borough of Rochdale, which were a different thing; and all the provisions of the Acts theretofore in force relating to the "town" were extended to and rendered applicable in respect of the enlarged borough. Now this portion of the enlarged borough comprises a portion of a district which was not within the jurisdiction of the Improvement Commissioners, or the jurisdiction of the municipal corporation, when they were acting as trustees, until that Act had obtained the Royal assent, and the Act obtained the Royal assent in 1872, not quite seven years before the Act of 1878 which we have to consider. There were several portions of turnpike roads which were within that extended district, as I may call it, the trusts of some of which had expired and some had not expired at the time when this action was brought. That being the state of things in 1872, in 1875 there came the Public Health Act of that year. That Public Health Act regulated what should be done in urban sanitary districts, and amongst others these are the clauses which are material. Within an urban sanitary district (which would include Rochdale, for Rochdale would be a borough whose corporation was exercising the powers of an urban sanitary authority), it is enacted that the municipal authority shall be the sole surveyor of the highways; and there is a clause (section 148) which clearly shews that the Legislature, in passing that Act

of 1875, were quite aware that within an urban sanitary district or through an urban sanitary district there might be turnpike trusts, and they made provision as to what should be done with them. The turnpike trusts were to continue, but arrangements and agreements might be made as to that portion of road which was subject to a turnpike trust wholly within the district of the urban authority, and that it might be managed by them. Of course, when such an Improvement Act as the present had passed, including section 50 of the Towns Improvement Act, the portion of the turnpike road which lay within the district that had been created under such Act was no longer to be managed by the turnpike trustees, but, by the general law of the land, the portion of highway which lay within the parish was repairable by that parish. The section which has been referred to of the Public Health Act shews that as a general matter the Legislature were quite aware that there might be turnpike roads running in urban sanitary districts. That being the state of things, there came the legislation of 1878, which has to be considered. The legislation of 1878, as regards all this matter, seems to have one general idea in it. The portion of road wholly within the parish was, by the general law of the land, repairable by that parish. It was a great hardship, or might be a great hardship, for that particular parish, which was, perhaps, a poor rural one, that the parish should have to keep up a road which was cut up by the traffic of distant parts of the country that came across it. That was a practical inconvenience which had been felt long before, and I believe it was mainly upon that ground that Acts for turnpike trusts were first introduced. Now, Turnpike Acts were almost always passed for a certain time, but in practice they were continued for a longer time—they varied in their terms; but that was the common thing.

The Legislature, seeing that what I have just stated was the case, seem to have thought that where there was a road which ran through a parish, or where there was a highway authority which had to maintain the road, that highway authority being substituted for the parish, it might be very hard upon it that a comparatively small district should maintain the road entirely for the benefit of the great traffic which passed through it, and which came from distant parts; and I think that was a sensible and intelligible reason for legislation. The mode in which the Legislature sought to remedy that hardship was to say that when there was such a road it should be a main road, and that the main road should still be maintained by the district in which it was, but that half of the expense was to be paid out of the county rate of the county in which it lay. They seem to have thought that when such a road had been put under a turnpike trust, *prima facie* that road was in its nature such as ought to be maintained in this manner; and it was certainly a reasonable enough thing so to think. Accordingly they passed the enactment which we have now to construe (section 13 of the Highways and Locomotives (Amendment) Act, 1878), and as to which it is no doubt very difficult to see what it means. "For the purposes of this Act, and subject to its provisions, any road which has within the period between the thirty-first day of December, one thousand eight hundred and seventy, and the date of the passing of this Act ceased to be a turnpike road, and any road which being at the time of the passing of this Act a turnpike road may afterwards cease to be such, shall be deemed to be a main road." I pass by the rest of it. What do these words mean? If they mean any road which was subject to a turnpike trust (meaning the whole road which was subject to a turnpike trust), and has ceased to be a turnpike road (meaning that the Turnpike Act has either been repealed or by efflux of time has expired), then the present case is not within them; for these portions of turnpike roads which lie within the extended borough of Rochdale are not within these words, and consequently the action was wrongly brought, and the judgment in the action ought to be for the defendants. That was the view which the Queen's Bench Division took—they thought that that was the meaning of these words. The Court of Appeal thought that any road has ceased to be a turnpike road

when, by legislation, though the rest of the road has continued to be a turnpike road, a portion of the road which had been subject to a turnpike trust has been taken from it, and the turnpike trustees have been forbidden either to spend money upon it or to interfere with it or to levy tolls upon it. When that had been done, the Court of Appeal thought that it had ceased to be a turnpike road, and as by the operation of the Act of 1872 these had, in that sense of the word, ceased to be turnpike roads within the seven years, the time limited, they thought that the plaintiffs were entitled to recover. The question now is, which of the two constructions of the Act is the right one. I do not myself attribute any weight whatever to the interpretation clause. My own impression is, looking at these words, that if the case had been now beginning I should have hesitated long before saying what the words of the Legislature did mean. I do not think that it is at all a good specimen of draughtsmanship—the words are by no means clear; I, however, rather think (but on this I wish to speak with some doubt) that if it had been absolutely *res integra* I should have inclined to the same opinion as the Queen's Bench Division did—I should have thought that the effect of the enactment was that it meant when the whole turnpike trust ceased. But the Court of Appeal having decided the other way, I rather think that if I were left deciding by myself alone I should say that, although I was inclined to agree with the Queen's Bench Division, yet I did not feel that so strongly as to make me reverse the decision of the Court of Appeal. But I find that the other noble and learned Lords who have heard the case have a much stronger opinion in favour of the view of the Queen's Bench Division than I have, and I certainly should not differ from them in the state of mind which I have described. I think that the strongest reason why the words which have been used in this legislation may bear the meaning which the Court of Appeal has put upon them is found in what Sir Hardinge Giffard brought forward—namely, that in the Towns Improvement Clauses Act, which is a general Act, section 50 certainly does use the words "any road" in such a sense as shews that they clearly mean part of a road; for it says that the turnpike trustees shall not spend money on any road or levy tolls on any road which lies within the district of the special Act, which clearly means any portion of a road that lies within that district.

Now the Legislature in passing section 13 of the Act of 1878 knew, or ought to have known (perhaps they forgot it), that there were a great many districts in England in which Acts had been passed including section 50 of the Towns Improvement Act as part of them; and, knowing that, when they used the words at the beginning of section 13, "any road" (the very words of section 50), there is a *prima facie* reason for saying that they used them in the sense in which the words had been used in the legislation which they were dealing with or ought to have been dealing with.

They used those words, no doubt; but then it may very well be said that it does not at all follow that words which are used in one Act by the Legislature shall have the same sense as when they are used in another Act. It is only when the two subject-matters are so closely connected that you can fairly say that the Legislature must have used the words in the same sense as they had done before, that the argument comes into play at all.

What I have said makes me pause before I venture to assert that the Court of Appeal were wrong. But when I look at the matter in the other way and see what good ground there is for saying that, having regard to the object of the Legislature, it would perhaps be reasonable to consider that the whole turnpike trust was then before the Legislature, I will not venture to differ from the other noble and learned Lords who have heard the arguments in the present case, and to say that the Court of Appeal were right.

Taking that view of the matter the result will be, and I beg to move, that the appeal be allowed with costs.

Lord Bramwell. — I concur in the advice which has been given to your Lordships by my noble and learned friend, and I confess that my opinion upon the matter

is so strong that when I consider who have decided the other way in the Court of Appeal, and the hesitation of my noble and learned friend, I have some misgiving as to whether I can properly have appreciated the considerations upon which the Court below have acted and my noble and learned friend has doubted.

I do not know historically how this Act came into existence. It may have been, as Mr. Gorst says it was, and I have very little doubt that it was so, from some notion of relieving agricultural districts in the way he supposes. However, I doubt very much whether, if one did know, one would have a right to apply that knowledge to the construction of this Act of Parliament. I think not. I think you must construe the Act of Parliament, not according to what possibly may have been the motives, if you can ascertain them, of those who passed it, but according to its language. I think, upon the language of the Act of Parliament, you can see what the intention was—namely, that whereas certain turnpike roads were maintained by the tolls which the turnpike trustees could levy, it was contemplated, as we know (and this we have a right to refer to, because it is general knowledge), that this power of levying tolls would cease by the expiration of the time for which the power to levy them had been given, and that, as a consequence of that, parishes which had no particular benefit from the road, any more than they had from other roads in the parish, would be liable to expenses for repairs occasioned by the use of those roads by persons out of the parish, by the general public in fact;—I say, taking those things into account, it seems to me that one can see that the Legislature intended to give a relief to parishes which would find themselves in the position of having to repair such roads as those—that is to say, roads which had ceased to be turnpike roads by reason of the expiration of the time within which the power of levying tolls could be exercised. It seems to me that the intention of the Legislature was to give relief to parishes in such cases as that—possibly to sanitary authorities, but I think not, for I do not see that it would apply to sanitary authorities—at all events we may say generally to give relief to the parishes through which the roads passed. I think one can see that that was the general intention.

Now let us see how that intention has been carried into effect by section 13 of that Act. I own to my mind the language of that section is plain. "For the purposes of this Act, and subject to its provisions, any road which has" (I will leave out the next words) "ceased to be a turnpike road, and any road which being at the time of the passing of this Act a turnpike road may afterwards cease to be such." To my mind these words plainly mean this—that when any turnpike road, or any road which was a turnpike road, has ceased to be such, or if any road which being a turnpike road (as, indeed, it says in so many words) shall cease to be such after the passing of this Act, then, upon the turnpike road spoken of there ceasing to be a turnpike road, the provisions of this section shall apply. I see no difficulty in understanding that to mean, not a road from the Land's End to John o' Groat's, but a road which was under a turnpike trust, and which may be five miles in length—or fifty, for all I know—and which may go through one parish, or parts of one parish, or one county, or may go into two or three. The expression, to my mind, is one which one ordinarily uses when one says, "This is a turnpike road"—that is to say, the particular place we are standing upon is a part of a road, which road is under a turnpike trust, or has the powers and duties, and rights and circumstances, which attend a road under a turnpike trust.

It seems to me manifest that this is so, not only from the reason of the thing, but when you come to the words, "and any road which being at the time of the passing of this Act a turnpike road may afterwards cease to be such." That says in words, "any road which being at the time of the passing of this Act a turnpike road." But part of a turnpike road is not "a turnpike road"; it is part of a turnpike road. And if after the passing

of this Act the turnpike powers expired as to any road, it would not be true that a part of the road in particular had ceased to be a turnpike road; it would be true of the whole road. If after the passing of the Act a particular part of the road were taken out of the operation of the turnpike trusts, it would not be true that the turnpike road had ceased to be a turnpike road; it would only be true that a part of it had. I confess this appears to me to be plain.

In addition to that, I think the expression "cease to be a turnpike road" (I do not want to repeat the arguments that have been used) is an inaccurate expression to apply to a case where a portion of a road has been taken away from the operation of a turnpike Act. It really is like the case that Mr. Blair put, of a man's hat being knocked off his head, and of a person saying, "You have ceased to wear your hat." In one sense it would be true; you could not say it was a falsity, but it would be a very inaccurate way of describing what had happened. The word "ceased" is a strictly proper word to apply to the case where the entire road has "ceased to be" a turnpike road because the powers applicable to the entire road have ceased; but it is an inaccurate expression to describe what has happened to a part of the road which has been taken out of the road generally, and which has in one sense ceased to be a turnpike road because it has ceased to be a part of a road which is a turnpike road. Therefore, if we look at the general intention of the statute which I think can very well be collected from it, and look also at the language used, it is manifest, to my mind, that this 13th section must be read thus: "For the purposes of this Act, and subject to its provisions, any road which has been a turnpike road" (that is to say, the entirety of the road which has been a turnpike road), "and at the date of the passing of this Act has ceased to be such, and any turnpike road which is a turnpike road at the time of the passing of this Act and afterwards ceases to be such," the provisions of the section shall apply to—I say that is a matter of mere construction.

But, further than that, really when one considers what the condition of things is here, as was most forcibly put by my noble and learned friend on my left (Lord FitzGerald), how is it conceivable that the Legislature could have intended that, at the expiration of six years, this burden which the corporation of Rochdale had voluntarily taken upon themselves (advisably, no doubt, and for good consideration) because they found it worth their while to do so, should be taken from them and shifted in part upon the county? Sir Hardinge Giffard very ingeniously suggested that possibly they had not taken it upon themselves, and he gave an illustration which was somewhat difficult to answer. "Suppose," said he, "the bill now threatening the Corporation of London and proposing to enlarge their jurisdiction, became law—years hence it might be erroneously said the corporation must have proposed or assented to it, for otherwise it would not have passed." But everybody knows perfectly well that towns do take this upon themselves, and that it is not legislation that has forced it upon them. They do it voluntarily, and no reason can be given, as I say, why it should be taken from them and put upon the county. In addition to that there is this consideration: I have been endeavouring to find a power in the local Acts which I cannot find altogether there, though I think there is some indication of it—probably it is derived from the provisions of the general Acts incorporated with these local Acts—a power enabling this corporation of Rochdale to deal with this road in an entirely different way from that in which rural parishes, or indeed urban parishes, can deal with the roads within their boundaries which cease to be turnpike roads, but which do not come within any of these Improvement Acts. I have not the slightest doubt in the world that it can be found out that the corporation of Rochdale may divert the road, and may deal with it in a way altogether different from the way in which a road is commonly dealt with by a parish which has to repair it after it ceases to be a turnpike road.

I confess I cannot feel any difficulty

about this case. It may be from my inability to appreciate the point which has created a doubt in the mind of my noble and learned friend who has addressed your Lordships, and which has caused the Court of Appeal to decide otherwise; but, speaking for myself, I really cannot entertain any doubt about it. I think that the judgment of the Court of Appeal must be reversed.

LORD FITZGERALD.—I agree with the opinion of the noble and learned Lord who has preceded me, and I should say that, from the beginning, I thought, on reading the two judgments—the judgment of the Queen's Bench Division and the judgment of the Court of Appeal—that, on the whole, it would be better to follow the judgment of the Queen's Bench Division. In that judgment, as delivered by Mr. Justice Williams, I think a construction is put upon section 13 of the Act of 1878, which follows its grammatical and ordinary meaning, which adds nothing to it, and above all, it will be observed, does violence to no existing right, and does not affect existing liabilities. When you find a grammatical construction of which that can be said, it is preferable in most cases to follow it. I should not say that I have a very confident opinion, because, as I have confessed in the course of the argument, questions arising upon the turnpike road Acts or highway Acts, as applicable to England, are entirely new to me; and I am especially glad that in this particular case I am relieved from the task of following out that labyrinth of Acts which we should have to deal with, if we had to take them as bearing one upon the other, for the purpose of interpreting section 13.

I deal with section 13 of the Act of 1878 alone. No doubt it is capable of two meanings. One meaning—that which I am prepared to adopt—was given to it by the Queen's Bench Division. Now let us see how the contrary meaning would operate. Certainly the section is capable of being construed as applicable to part of a road, as well as to the whole of the road, which is subject to some particular turnpike trust; but in dealing with it as the Court of Appeal have done, you involve yourself at once in difficulties. You interfere with existing liabilities, and you create rights which did not exist before the Act passed. I have already pointed this out in the course of the argument; it has become of importance as affecting, not the borough of Rochdale alone, but also many boroughs throughout the country. There must be, and I assume that there are, a great many boroughs in different counties in exactly similar circumstances —that is, boroughs which have taken upon themselves the maintenance of the roads within the territorial ambit of the borough, getting in return complete control over them, a property in them, and a right to do with them as they please, save that they are under an obligation to keep them in repair; and that they may raise special rates within the limits of the borough for that purpose. In addition to the full dominion, they get an ample equivalent for the expenses of maintenance in being protected by the provisions of the Act from contribution to other county rates in reference to roads situate in the district of the county to which the borough belongs. It has been observed that, before the passing of the Act of 1878, the position of the borough of Rochdale since 1872 was unaltered. I dare say that observation would apply to other boroughs in the country. They had certain liabilities, and they had no right to reduce those liabilities by going to the county at large. We all know that, as was pointed out by the noble and learned Lord who has last delivered judgment, when a road becomes a portion of a borough such as Rochdale, the whole state of things is altered, and the repairs of the road become quite a different thing. Probably, in place of being an ordinary country road, it becomee one paved and with footpaths. The expense of keeping it in repair may be double what it was before, and if we are to adopt the construction put upon section 13 by the Court of Appeal, the result would be that one half the cost of repair of such of these roads as had formerly belonged to turnpike trustees would be thrown upon the county at large. I asked if there was anything in the language

of the Act of Parliament which would warrant us in coming to that conclusion, or if there was any reason that could be adduced from the special nature of the matters dealt with by the Legislature to lead us to that conclusion, and I got no answer to the question.

It appears to me to be a question between two interpretations, one of which is according to the literal, grammatical, common-sense construction of section 13, applying the language of the section to that state of facts where a road which has been the subject of a turnpike trust has ceased to be a turnpike road, either by effluxion of time or otherwise, and not applying it to a portion of the road. That is according to the grammatical and fair construction of it, and it involves you in no difficulty. But you at once get into difficulty and expose yourself to the danger of doing injustice when you adopt the contrary construction. For that reason, from the beginning, I have thought that the Queen's Bench Division was right, and I agree now with the judgment of my noble and learned friends.

Order appealed from reversed, judgment of the Queen's Bench Division restored; respondents to pay the costs in the Court of Appeal and of this appeal; cause remitted to the Queen's Bench Division.

Solicitors—Ridsdale & Son, agents for Wilson & Hulton, Preston, for appellants; J. J. & C. J. Allen, agents for Z. Mellor, Rochdale, for respondents.

1883. June 12. July 10.

THE GUARDIANS OF THE PARISH OF MARYLEBONE (*appellants*) *v.* THE GUARDIANS OF THE UNION OF WYCOMBE (*respondents*).

Poor—Derivative Settlement—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 *Vict. c.* 61), *s.* 35.

An order was made for the removal to their place of birth of two illegitimate pauper children under sixteen, of whom neither had acquired any settlement for itself, and whose mother had not acquired any settlement for herself and was the daughter of a man who, while she was under sixteen, and before the passing of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 *Vict. c.* 61), *s.* 35, *acquired a settlement for himself:*—Held, *that, under* 39 & 40 *Vict. c.* 61. *s.* 35, *such order was right, it being impossible to shew what settlement the pauper children derived from their mother without enquiring into the derivative settlement of the mother, the mother's birth settlement being superseded by her father's acquired settlement.*

SPECIAL CASE stated upon an appeal to Quarter Sessions against an order of removal of two pauper children. The facts and arguments are stated in the judgment.

J. V. Vesey FitzGerald, for the appellants.

Bompas, Q.C., and *E. Lumley*, for the respondents.

The judgment of the Court (1) was delivered (on July 10) by

WILLIAMS, J.—This was an appeal by the guardians of the parish of Marylebone to the Quarter Sessions of the county of Bucks against an order of removal, dated the 25th of August, 1882, of two pauper children, named Thomas William Wilmot, otherwise Beale, and Sidney Wilmot, otherwise Beale, the illegitimate children of Emily Louisa Beale, from the union of Wycombe to the parish of Marylebone.

The Quarter Sessions confirmed the

(1) Williams, J., and Smith, J.

order of the Justices subject to the opinion of this Court upon a Special Case.

The Special Case was argued before my brother Smith and myself during the present sittings, and I now proceed to give the judgment, in the result of which he concurs. The facts are as follows:—

Emily Louisa Beale, the mother of the paupers, was born in 1857 in the parish of Shoreditch, and had never done anything to acquire any other settlement for herself; her father, William Beale, after her birth, and while she was a child under sixteen, acquired a settlement, by occupation of a tenement and payment of rates, in the parish of Bermondsey.

The two pauper children were born in the parish of Marylebone in the years 1877 and 1879 respectively, and were the illegitimate children of the said Emily Louisa Beale.

The two children had been deserted by their mother in the union of Wycombe, and had become chargeable to that union; and the order of the 25th of August, 1882, which is the subject of this appeal, directed their removal to the parish of Marylebone, the place where they were born.

Upon these facts the appellants contended that the proper settlement of the paupers was the parish of Shoreditch, being the birth settlement of their mother, or at any rate that they were not shewn to be settled in Marylebone, their contention being that since the abolition of the derivative settlements by the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 35, the mother's true settlement was her birth settlement, and that consequently the children derived her settlement in Shoreditch.

The respondents, on the other hand, contended that, upon the above facts, it could not be shewn what settlement the paupers derived from their parent without enquiring into the derivative settlement of such parent, and that consequently by the provisions of the Act the children must be deemed to be settled in Marylebone, where they were born.

The language of the section is as follows (2):—

The question turns upon the true construction of this section.

If it had not been for conflicting decisions and opinions upon the question, I should have thought it clear that the order appealed against was correct, upon the short grounds—first, that the mother's settlement was Bermondsey, being her derivative settlement from her father; secondly, that it could not be shewn what settlement the children derived from her without enquiring into that derivative settlement, and therefore, in the words of the statute, that the children must be deemed to be settled in Marylebone, where they were born.

This appears to have been the decision of Lord Justice Lush and Mr. Justice Manisty in the case of *Manchester* v. *St. Pancras* (3); but a contrary interpretation seems to have been given to the section by Lord Justice Lindley and Mr. Justice Mathew in *Hollingbourne* v. *West Ham* (4); and lastly, we have the Master of the Rolls, sitting with Lords Justices Cotton and Bowen, in the most recent case upon the subject, *Madeley* v. *Bridgnorth* (5), declaring that the section is unintelligible, and that he cannot, and does not pretend to understand it, and that he is unable to see a case to which the third part of the section applies. In this state of conflict of opinion it becomes necessary carefully and minutely to examine the facts of the

(2) 39 & 40 Vict. c. 61. s. 35: "No person shal be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father, or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another.

"An illegitimate child shall retain the settlement of its mother until such child acquires another settlement.

"If any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

(3) Law Rep. 4 Q.B. D. 409.

(4) 50 Law J. Rep. M.C. 74; Law Rep. 6 Q.B. D. 580.

(5) 52 Law J. Rep. M.C. 71.

case in relation to every word of the section which is applicable to them.

In the first place, the paupers are children, they are illegitimate, they are under sixteen, they were born in Marylebone, and have not acquired a settlement for themselves; the mother, who has deserted them in the union of Wycombe, was born in Shoreditch in 1857, and while she was under sixteen, and before the recent Act came into operation, derived her father's acquired settlement in Bermondsey, and has done nothing to acquire another. Such are the facts; and I now turn first to the second part of the section, which deals expressly with illegitimate children, and this says, "an illegitimate child shall retain the settlement of its mother until such child acquires another settlement." This language, if we had to go no further, is plain and unequivocal; but, if it is to be read in connection with the rest of the section, it gives rise upon the facts before us to a series of further questions. The first is, what is the mother's settlement? Is it her derivative settlement in Bermondsey; or is this abolished by the Act, and is she remitted to her birth settlement in Shoreditch? Secondly, if she retains her derivative settlement, then does the third part of the section apply so as to throw the children back upon their birth settlement, or do they retain the settlement of the mother as directed by the second part of the section, or do they take her birth settlement?

To begin with the first of these questions, we must turn to the language of the first part of the section, which declares that, "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate, or otherwise, except in the case of a wife from her husband, and in the case of a child under sixteen, which shall take the settlement of its father . . . . up to that age, and shall retain the settlement so taken until it shall acquire another." The first point that arises here is whether the words "no person," at the commencement of the section, are to be read simply without any qualification, or are they by the context limited to persons who are paupers and whose settlement is under consideration? The latter is the opinion expressed by Lord Justice Brett in the Madeley case (6). If this be correct, then, of course, the mother, not being a person whose settlement as a pauper is under consideration, retained her derivative settlement, and we might at once proceed to consider the further questions. But I will assume for a moment, what I do not concede, that the section includes all persons; then the further question must be answered, whether the mother comes within the exception of the case of a child under the age of sixteen which is to take the settlement of its father up to that age and retain the settlement so taken until it acquires another? This point was decided in 1878 by Lord Chief Justice Cockburn and Mr. Justice Manisty in the case of *Great Yarmouth* v. *The City of London* (7). In that case the question was as to the settlement of Hannah, wife of James Fisk, who was born in 1843 at Great Yarmouth. James Fisk never acquired a settlement in his own right. His father, George Fisk, while the son James was under sixteen, acquired a settlement in Gorleston. In 1877, Hannah, the pauper, the wife of James, became chargeable to the City of London, and an order of Justices was made adjudging her to be legally settled in Great Yarmouth, as her husband's birth settlement. This order was appealed against and quashed, the Court adjudging that James Fisk's true settlement was his derivative one from his father, upon the ground that he came within the exception in section 35 of a child under sixteen who took and retained the settlement of his father until he acquired another, which he never did. Upon principle, therefore, as well as authority, I am of opinion that Emily Louisa Beale, the mother, retained her derivative settlement, upon the ground that she was within the exception of a child under sixteen who took and retained her father's acquired settlement in Bermondsey.

The further question now arises, Does the third part of the section apply to the case; and, if so, what is the effect of it? In

(6) 52 Law J. Rep. M.C., at p. 74.

(7) 47 Law J. Rep. M.C. 61; Law Rep. 3 Q.B. D. 233.

dealing with this question, the first point that presents itself is whether illegitimate children come within the description "any child" in the section mentioned. It seems to me clear that they do. Illegitimate children are expressly mentioned in the section, and there is nothing in the context, so far as I can see, to limit the expression "any child"; and this was so decided by Lord Justice Lush and Mr. Justice Manisty in the case of *Manchester* v. *St. Pancras* (3).

We next come to a question which, if it had not been doubted, I should have thought equally plain—namely, whether illegitimate children can be referred to in the section, when it speaks of children deriving a settlement from their parent—in other words, whether illegitimate children ever take a derivative settlement? This point is, I believe, really involved in the decision last referred to; but I think it will be best to consider how the case of illegitimate children stands. Before the Poor Law Amendment Act, 1834 (4 & 5 Will. 4. c. 76. s. 71), the liability to relieve illegitimate paupers fell upon their place of birth, which therefore was their place of settlement, with this qualification—that during the age of nurture such children could not be separated from the mother, and the liability to relieve them fell by accident, as it were, upon the place of the mother's settlement. In this state of the law difficulties arose as to the exact time when the mother and child could be separated and removed to different places. The 71st section of the Poor Law Amendment Act, in order to settle those difficulties, enacted that "every child which shall be born a bastard after the passing of this Act shall have and follow the settlement of the mother of such child, until such child shall attain the age of sixteen or shall acquire a settlement in its own right." Upon this section it was decided by Lord Campbell and the Court of Queen's Bench, in 1853 (*St. Andrew* v. *Bodenham* (8), that the place of settlement of an illegitimate pauper over the age of sixteen, who had acquired no settlement of his own, was the place of his birth, and not the settlement of his mother. Then came the present statute, which enacts that "an illegitimate child shall retain the settlement of its mother until such child acquires another settlement." It seems to me, therefore, strictly correct to say that an illegitimate child is a child that derives or may derive a settlement from its parent.

Lastly, we come to the question, whether the final provision of the third part of the section is applicable to the case, and, if so, what is the effect of it? The words are, "if . . . . it cannot be shewn what settlement such child derives from the parent, without enquiring into the derivative settlement of such parent, such child shall be deemed to be settled in the parish in which he was born."

Lord Justice Lindley and Mr. Justice Mathew, in the case of *Hollingbourne* v. *West Ham* (4), considered that this part of the section did not apply to cases that came within the plain words of the first part of the section relating to legitimate children with their widowed mother, and therefore presumably not to the case of illegitimate children dealt with by the second part of the section; but in opposition to this is the decision of Lord Justice Lush and Mr. Justice Manisty in *Manchester* v. *St. Pancras* (3). In that case the mother of an illegitimate pauper had married, and derived a settlement from her husband; and it was decided that, upon the true construction of this section, the pauper child took neither the birth settlement nor derivative settlement of its mother, but that it was settled in the place of its birth. The same thing was again decided, in the case of *The Fulham Union* v. *The Portsea Union* (9), by Baron Pollock and Mr. Justice Manisty.

The difficulty of interpretation in this conflict of opinion is not lessened by the declarations of the Lords Justices in the present year, in the case already referred to, with all the above authorities before them, that the whole section was unintelligible.

Under these circumstances, it is impossible to speak with any confidence as to the proper interpretation of the Act; but the best judgment I can form, after very full and careful consideration, is that the

(8) 1 E. & B. 465; 22 Law J. Rep. M.C. 39.

(9) 50 Law J. Rep. M.C. 144; Law Rep. 7 Q.B. D. 384.

third part of the section is applicable to the case of illegitimate children whose mother has derived a settlement from her father, and that as soon as this appears then the contingency has arisen which is referred to in the Act—namely, that it cannot be shewn what settlement such children derived from the parent without enquiry into the derivative settlement of such parent, and that the consequence expressly provided for by the Act immediately follows—namely, that the children shall be deemed to be settled in the place where they were born. Taking, then, the section as a whole, I interpret it as follows:—That, in considering the immediate question of the settlement of a pauper, as a general rule, no pauper is to be deemed to have derived a settlement from another person. From this general rule there are excepted the cases of married women, who are still to derive their settlements from their husbands; and children under sixteen and illegitimate children, who are to derive and retain the settlement of their parents. The Legislature then proceeds to recur to the general rule, by making an exception upon the exception, and declares that so far as pauper children are concerned they shall not derive from their parents a derivative settlement; but in cases where the parent's settlement itself is a derivative one the children shall be sent to the place of their own birth, and in such case shall derive no settlement from their parent at all.

We are of opinion that we must confirm the order of Quarter Sessions, with costs.

Order confirmed.

Solicitors—Clarkson, Greenwell & Co., for appellants; Lovell, Son & Pitfield, agents for T. J. Reynolds, High Wycombe, for respondents.

1883. Nov. 23. } SHELLEY (*appellant*) *v.* BETHELL (*respondent*).

Stage Plays—Theatres Regulation Act (6 & 7 Vict. c. 68), s. 2—Place of Public Resort—Public Performance in Private Theatre.

By 6 & 7 Vict. c. 68. s. 2 (the Theatres Regulation Act), it is enacted that "it shall not be lawful to have or keep any house or other place of public resort for the public performance of stage plays without licence from the Lord Chamberlain."

The appellant, owner of a private theatre, lent it to persons for the performance on four occasions of plays in it for the benefit of a charity. Such performances were advertised, and tickets of admission were sold by the managers on behalf of the charity to the general public, who witnessed the performances to the number of about 300 on each occasion. No money was taken at the doors; the appellant's servants opened and closed the house for the performances, and he never parted with the possession of the building, and received nothing for the use of his house or servants. The appellant was convicted under the above section, he not having any licence:—

Held, *that the conviction was right.*

CASE stated by a metropolitan police magistrate, under 20 & 21 Vict. c. 43, on the hearing of four several complaints by the respondent against the appellant, charging that the appellant, on the 13th, 15th and 16th of December, 1882, and on the 16th of January, 1883, being the occupier and keeper of a certain house of public resort called The Shelley Theatre, did have and keep open the said house for the public performance of stage plays therein, without authority or licence as required by law, contrary to section 2 of 6 & 7 Vict. c. 68. Upon the hearing the following facts were proved or admitted:—

1. The appellant is the owner and occupier of Shelley House, Chelsea, in the county of Middlesex. He is also the owner and occupier of a piece of land on the opposite side of Tite Street, upon which he has built a house or building called "The Shelley Theatre." This is quite a separate and distinct building from Shelley House, and apart from it.

Shelley v. *Bethell.*

2. The said Shelley Theatre is in the appellant's occupation, and he is rated for it separately from his private residence. Externally there is nothing to indicate that stage plays are performed within the theatre. The interior is fitted up as an ordinary theatre, with a stage, stage scenery, stage machinery, footlights, drop-scene, curtain, orchestra and dressing-rooms for the actors. The part of the theatre for spectators contains seats for 200 or 300 spectators. There is no place in the theatre used for the sale of tickets or the receipt of money for admission, nor any box or checktaker's office, nor any of the other appliances for taking seats or money used in a public theatre. On the occasions in question the tickets of admission were given up at the entrance lobby to a person appointed to receive them. The said theatre is not a patent theatre, nor has the appellant a licence for the public performance of stage plays therein.

3. With regard to the summonses as to the 13th, 15th and 16th of December, 1882, it was proved that in the *Morning Post* newspaper of the 5th of December, 1882, and in the *Era* newspaper of the 9th of December, 1882, the following advertisement was published:—"Sir Percy Shelley's Theatre, Tite Street, Chelsea Embankment.—In aid of the funds of the School of Dramatic Art, there will be performed for the first time, on Wednesday the 13th of December, a new and original comedy in three acts, entitled 'Cousins,' by Hamilton Aïdé, under the author's personal superintendence. Doors open at 7.30. To commence at 8.0." Then followed a list of patrons. "The performance will be repeated on Friday morning the 15th at 2 o'clock, and on Saturday evening the 16th at 7.30. Tickets 1*l.* 1*s.*, to be procured of the secretary, School of Dramatic Art, 7 Argyll Street, Regent Street."

4. It was proved that such advertisements were inserted by the order of the secretary of the School of Dramatic Art, under the direction of Mr. Hamilton Aïdé, the author of the play called "The Cousins" which was performed in the Shelley Theatre as advertised under his personal superintendence. Mr. Aïdé also gave Mr. Raleigh, the said secretary, instructions to sell the tickets. Plans shewing the position of the seats in the theatre were prepared by and under the direction of the said secretary, and persons who applied for tickets had their seats marked in such plan with a number corresponding with that on each ticket.

5. It was proved that over 300 tickets were sold by the said secretary for the said performances at 1*l.* 1*s.* per ticket; no names were put on the tickets, but numbers only, and the secretary had no instructions to refuse any applicant. The appellant personally gave the said secretary no instructions as to sale of tickets, but was usually present at the performances, and gave directions occasionally as to the placing of the spectators' seats.

The following is the form of the tickets so sold:—

"Wednesday, December 13th.
Amateur Theatricals.
Shelley Theatre.
Ticket—One Guinea.
Doors open at 7.30.—Performance at 8 o'clock."

6. On the 13th of December, 1882, one Arthur Casson Lewis purchased from the said secretary and paid for a ticket, and previously to the performance for which such ticket was available—namely, that on the 13th of December, 1882—the said Arthur Casson Lewis handed the said ticket to one John Mitchell, a solicitor, who presented himself at the time mentioned on the said ticket and demanded admission. The said John Mitchell was in evening dress, and the seat in the theatre mentioned on the said ticket was unoccupied. The said John Mitchell was, however, refused admission by the order of the appellant. The said John Mitchell was clerk to the respondent's solicitor, and I concluded that he was recognised, and on this account was refused admission, but no direct statement to this effect was made. The sum of 1*l.* 1*s.* paid for the said ticket was returned, and accepted by the said John Mitchell, and he left the theatre without obtaining admission.

7. No tickets of admission were sold within, outside or about the theatre except on one occasion, when Mr. Hamilton Aïdé just outside the theatre received a guinea from a gentleman for a ticket, which was

afterwards sent to him by post. It was admitted that the farce of "Après le Bal" and the play of "The Cousins" were performed by the *dramatis personæ* dressed in costumes in the said theatre on the evenings of the 13th and 16th of December, and the afternoon of the 15th of December, 1882, and that the said pieces were stage-plays within the meaning of the said statute 6 & 7 Vict. c. 68.

8. It was proved that the appellant painted part of the scenery used at the performance of one of the said stage plays and witnessed the performances. All the scenery used was his, and his servants opened the theatre doors, shifted the scenes, and closed the building after the performances on all the occasions, and large audiences were present on each of them. The appellant never parted with the possession of the theatre, but only allowed Mr. Hamilton Aïdé and those interested in the School of Dramatic Art to use the same for the purpose referred to. There was no evidence, and it was not alleged, that the appellant had been paid or received any money or other reward on account of the said performances or for the use of the said theatre, or for allowing persons to be admitted thereto to witness the said performances. It was not alleged that any distilled or fermented excisable liquor was sold in the said theatre. It was admitted that the balance of the moneys received by the said secretary, after he had paid the expenses incurred in connection with the performances, was paid or applied by him to the funds of the said School of Dramatic Art.

9. With reference to the summons as to the 16th of January, 1883, it was proved that programmes were sent by the secretary of the Victoria Hospital for Children to about thirty persons, and a large number of programmes were sent to other persons interested in the hospital.

9. If a person came to the hospital and paid 10*s.* 6*d.*, a receipt was given him in the following form :—

"The Victoria Hospital for Children, Queen's Road West, Chelsea, and Churchfields, Margate.

Series F. 203. 15/1/83

"Received of Mr. Mitchell the sum of half a guinea, being a donation towards the funds of the above hospital for the year 1883.

10*s.* 6*d.* R. E. Blount, Secretary."

And a ticket to see the performance was given him in the following form :—

"The Shelley Private Theatre.

Tite Street, Chelsea Embankment.

By kind permission of Sir Percy Shelley.

An amateur performance of 'The Parvenu' will be given at the above theatre, on Tuesday evening, January 16th, 1883. To witness which the honour of the company of Mr. Gibson is requested. The curtain will rise at 7.30."

10. Any of the public could, by paying the sum of 10*s.* 6*d.*, get a ticket of admission; but it was proved that two applicants, gentlemen from the office of the respondent's solicitor, were informed that the appellant reserved the right of refusing any one admission if he thought fit.

11. It was proved that a person sent 1*l.* 1*s.* to the secretary, and asked for two invitations, but by mistake they were not sent; and the person, not being able to be present at the performance, thereupon asked for his money back, and it was returned.

12. As in the former case, the appellant never parted with the possession of the theatre, but only allowed those interested in the hospital to use it for the purpose referred to. The appellant was present, but in no way took part in the performances. No evidence was given to shew that the appellant personally received any pecuniary benefit from the performance, but I believed on the evidence that he lent the theatre gratuitously, and allowed the sale of the tickets above described for the benefit of the objects above named. A large audience was present on the occasion.

13. It was admitted that "The Parvenu" is a stage play within the meaning of the statute 6 & 7 Vict. c. 68, and that it was performed by the *dramatis personæ* in costume in the said theatre on the 16th of January, 1883, in accordance with the said programme.

14. The police were specially employed on each of the four occasions to keep order and regulate the traffic in the street, and were paid by the appellant.

15. It was contended on behalf of the appellant :—

Shelley v. *Bethell.*

(1.) That the said building (that is, the Shelley Theatre) was not a house or place of public resort within the meaning of section 2 of the said statute (6 & 7 Vict. c. 68).

(2.) That even if it was a house or place of public resort, it was not kept for the public performance of stage plays within the meaning of the said section.

(3.) That the said building must be both a house or place of public resort and kept for the public performance of stage plays to justify a conviction under the section.

(4.) That the keeping referred to within the section meant an habitual keeping of a place of public resort for the public performance of stage plays, and not an occasional performance, as proved in this case.

16. I was of opinion, on the evidence, that the said building called the Shelley Theatre was a theatre, and that the same was had and kept open as a place of public resort for the public performance of stage plays on the days mentioned in the summonses, and that the said theatre was not a patent theatre, or duly licensed as required by law (see section 2 of 6 & 7 Vict. c. 68), and I imposed a penalty of 1*s.* and costs on the appellant in each of the four summonses taken out under that section.

There was another complaint and conviction under section 11, but no argument was addressed to the Court upon it, in consequence of their decision against the appellant under section 2.

Willis Bund, for the appellant.—This was not a place of public resort, because the appellant could refuse admission to any person; he was not paid for the use of it.

[LORD COLERIDGE, C.J.—Cannot the lessee of any theatre refuse admission, if he pleases?]

Not, it is submitted, if the person is willing to pay the price, and there is room. If any one has a right to go to a place whenever he likes, that is a public place. This is like a private house; it does not differ from a room in an ordinary house fitted up for amateur theatricals. Then, before the conviction under section 2 can be sustained, there must be shewn to be an habitual keeping. Merely allowing the occasional use of this private theatre to persons other than his personal friends cannot be said to be keeping a place of public resort.

[LORD COLERIDGE, C.J.—The words are "have or keep," and there is a distinction.]

In *The Queen* v. *Strugnell* (1) Lush, J., says that it would be straining the language to the very utmost to say that this section would apply to any person who only pays for permission to act plays for a single evening or for a succession of six evenings. So it would be straining the Act to say that a man who occasionally admits the public has or keeps the place.

[MATHEW, J.—But there is a penalty for every day, so there must be in contemplation a having or keeping for a single day.]

Then the appellant is not liable for the acts of his friends to whom he lent the theatre.

[LORD COLERIDGE, C.J.—He knew what it was for, and he lent his servants with the theatre.]

Poland and *B. Coleridge* were not called on for the respondent.

LORD COLERIDGE, C.J.—It is reasonably clear that in this case Sir Percy Shelley has, I dare say with the best intentions, been guilty of an offence against the law, and he has therefore been properly convicted in a penalty under section 2. That section enacts that "it shall not be lawful for any person to have or keep any house or other place of public resort for the public performance of stage plays without authority by virtue of letters patent from the Crown, or without licence from the Lord Chamberlain." Here Sir Percy Shelley has constructed a theatre—a building useful for nothing else but a theatre—and in which stage plays are acted from time to time; and it is proved that, on two occasions at least, for the benefit of charities and other excellent objects, stage plays were performed in this house erected for the very purpose. The performances were advertised, and tickets were sold, and as many as 300 persons were thus brought together, and all the ordinary incidents of

(1) 35 Law J. Rep. M.C. 78; Law Rep. 1 Q.B. 93.

the public performance of stage plays for money occurred in this house or theatre kept by Sir Percy Shelley. It would be frittering away the language of the Act of Parliament to say that this was not within it. It is important to maintain the jurisdiction of the Lord Chamberlain for many reasons: the collection of large numbers of persons in buildings for public exhibitions leads to considerable danger, and the safety of the public requires that, in a wealthy country, a person should not be able to erect and open buildings which may be causes of danger, and, merely because he is wealthy enough to dispense with the receipt of money for the public performances held therein, evade the provisions of the Act altogether. If they could do so, the Lord Chamberlain's supervision of places of public entertainment would be nugatory. It is said that the appellant did not "keep" this theatre as a place of public resort; but the words are "have or keep," and it is obvious that those words are not meant to be synonymous, because the proprietor is made liable to a penalty for every single day on which the house is kept open; it is not, therefore, necessary to bring the case within the penal clauses that there should be constant or continual performances—a single performance incurs the penalty. I think, therefore, that the magistrate was quite right in convicting the appellant on the first information under section 2.

Upon the case on the second information under section 11 I express no opinion; but the inclination of my mind is that Sir Percy Shelley is not within its provisions; this is, however, only an impression, as the question has, by agreement, not been argued, and no decision was to be pronounced upon it.

MATHEW, J.—I am of the same opinion. The argument against the conviction was, that a private theatre, open occasionally for public performance, is not a place of public resort for the public performance of stage plays within section 2 of the Theatres Regulation Act. But while the earlier part of the section says that it shall not be lawful to have or keep any place of public resort for the public performance of stage plays without a licence, the latter part imposes a penalty for every day on which such place shall have been kept open for the purpose aforesaid. What is the purpose referred to? It is the public performance of stage plays. Now, it is clear that here the place was so open, and the public were invited to attend, and did attend, on payment for their tickets. The conviction must be affirmed on the first information. I say nothing about the second.

Conviction affirmed.

Solicitors—C. E. Withall, for appellant; C. & S. Harrison & Co., for respondent.

1883. July 19.

THE QUEEN (*on the prosecution of the Assessment Committee of the Poplar Union, respondents*) *v.* THE EAST AND WEST INDIA DOCKS COMPANY (*appellants*).

Rating — Quinquennial Valuation — Supplemental Valuation—"Alteration"—"Preceding Twelve Months"—Evidence—Valuation (Metropolis) Act, 1869 (32 & 33 *Vict. c.* 67), *ss.* 46 *and* 47.

The quinquennial valuation made under the Valuation (Metropolis) Act, 1869, *is conclusive as to the value of the property at the time it was made, and the owner is not entitled, for the purpose of a supplemental valuation list, to have the property valued at its present actual value, and such value entered in the supplemental list, but to have deducted merely the alteration, if any, in value which has taken place during the preceding twelve months.*

In support of a claim by the owner of property to have that property inserted in a supplemental valuation list made by the overseers of a metropolitan parish, on the ground that an alteration has taken place in the value of such property within the preceding twelve months, within the meaning of section 46 *of the Valuation (Metropolis) Act*, 1869, *evidence of diminution in*

annual profits is admissible and relevant, but by itself is not sufficient.

These were rules to quash two orders made by the Court of General Assessment Sessions, holden at the Guildhall, Westminster, on Tuesday, the 16th of March, 1883, under and by virtue of the Valuation (Metropolis) Act, 1869, subject to two identical Special Cases in respect of each of the above parishes stated by the said Court for the opinion of the Queen's Bench Division of the High Court of Justice.

From the Special Cases it appeared that the East and West India Docks Company are and have been for many years possessed of extensive docks, premises and hereditaments lying partly in the parish of Bromley, St. Leonard, and partly in the parish of All Saints, in the Poplar Union, in the county of Middlesex.

At the quinquennial valuation made in 1875, Mr. George Pownall was appointed by the Court of General Assessment Sessions to make a valuation of the said property under the provisions of the Valuation (Metropolis) Act, 1869, and the Court, after considering his report, duly fixed the gross and rateable values of the aforesaid hereditaments, and such values were duly entered in the quinquennial valuation list for 1875.

At the next quinquennial valuation, which took place in the year 1880, the said company were assessed at the same values as before, and did not appeal against the said valuation list, or the assessment so made, and such values were duly entered in the quinquennial list of 1880.

In the year 1881 supplemental valuation lists, within the meaning of the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67. s. 46) (1), were duly made and deposited by the overseers of the said parishes. They did not include therein

(1) 32 & 33 Vict. c. 67. s. 46:—"Every valuation list shall be revised in manner directed by this Act, and such revision in every period of five years (the first of such periods beginning with the 6th day of April, 1871) shall be conducted as follows:—

"1. In each of the first four years of such period a supplemental list shall, if necessary, be made out in the same form as the valuation list, and shall shew all the alterations which have taken place during the preceding twelve months in any of the matters stated in the valuation list, but shall contain only the hereditaments affected by such alterations. If no alteration has taken place which makes a supplemental list necessary, the overseers shall send a certificate to that effect to the assessment committee in place of such list, which certificate may be in the form contained in the second schedule to this Act:

"2. In the fifth year of every such period the overseers shall make a new valuation list:

"3. The same regulations shall be observed and the same proceedings shall be had in the case of a supplemental list and a new valuation list as are directed by this Act and the Acts incorporated herewith in the case of the valuation list made in the first year after the passing of this Act:

"4. A supplemental list and a new valuation list shall come into force at the beginning of the year succeeding that in which they are respectively made in the first year after the passing of this Act:

"5. In each of the last four years of such period the valuation list which was in force on the day before the commencement of each such year, together with and as altered by the supplemental list, if any, which comes into force at the commencement of such year, shall be the valuation list which is in force during that year:

"6. A new valuation list when it comes into force shall supersede the valuation list which was in force during the fifth year of such period."

Section 47: "If in the course of any year the value of any hereditament is increased by the addition thereto or erection thereon of any building, or is from any cause increased or reduced in value, the following provisions shall have effect:

"1. The overseers of the parish in which such hereditament is situate may, and, on the written requisition of the assessment committee, or of any ratepayer of the union, or of the surveyor of taxes for the district, shall send to the assessment committee a provisional list containing the gross and rateable value as so increased or reduced of such hereditament:

"2. A copy of the requisition shall be sent by the person making it to the clerk of the assessment committee, and if within fourteen days after the requisition has been served on the

the said hereditaments of the said company. No objection was made by the said company to the said supplemental lists, nor any application to be inserted therein.

In 1882, notices were given by the said company to the overseers of the said parishes, requiring them to make and deposit supplemental valuation lists, within the meaning of section 46 of the Valuation (Metropolis) Act, 1869 (1), aforesaid, shewing the alterations which had taken place within the preceding twelve months in the gross and rateable values of the said hereditaments.

A supplemental valuation list, within

overseers they make default in sending such provisional list, he shall forthwith summon the assessment committee, and the assessment committee shall appoint a person to make such provisional list, in the same manner as is in this Act provided in the case of the overseers failing to transmit a valuation list:

"3. On the receipt of the list, the clerk of the assessment committee shall serve on the surveyor of taxes for the district a copy of the list, and shall serve on the occupier of any hereditament to which the list relates a copy of so much thereof as relates to that hereditament. Every copy shall be accompanied by a note specifying a day, being not less than fourteen days after the date of the service of the notice, on or before which any objection to the provisional list may be made, and stating the mode in which an objection is to be made. Such copy and notice shall be served in the same way as notices by an assessment committee are served:

"4. An objection may be made to any such provisional list by the said occupier, and by the surveyor of taxes, or by either of them, by notice thereof in writing being served on the clerk of the assessment committee, on the overseers, on the surveyor of taxes, and on the occupier, or on such of them as the case may require:

"5. The clerk of the assessment committee, on the receipt of the notice of any objection, shall forthwith summon a meeting of the committee, and give notice of the time and place of such meeting to the overseers, to the surveyor of taxes, and the occupier:

"6. The committee shall hear and determine on the objection in the same manner as if it were an objection to a valuation list, and may make such order as they think just:

"7. If no objection is made, then on the expiration of the time for making objections, or if an objection is made, then as soon as the assessment committee have determined on the objection, the assessment committee shall cause a copy to be made of the provisional list, with any alteration made in it by the committee, and shall return the list and the copy thereof, after being dated and signed by their clerk, to the overseers:

"8. A provisional list, signed as aforesaid, shall have operation from the date of the service by the clerk of the assessment committee of a copy of the list, and notice on the occupier; and shall

continue in force until the first list (supplemental or other), which is subsequently made, comes into force:

"9. Upon a provisional list coming into operation, the overseers shall make such entries in the rate book for the then current poor rate as will bring the same into conformity with such list, and shall also enter therein the date at which such list is to come into operation, and shall charge the occupier of such hereditament with a proper proportion of such current poor rate, regard being had to the time which has elapsed between the making of such rate and the said rate, and to the rateable value stated in such provisional list, and such occupier shall be considered as actually rated for such sum from the said date, and be liable to pay the same, and the same may be enforced accordingly:

"10. A provisional list, during the time that it is in force, shall be deemed to form part of the valuation list for the time being in force, and shall (so far as is necessary) be substituted for so much of that valuation list as relates to the same hereditament, and every rate and tax, in respect of which the valuation list is conclusive, which are respectively made or charged after the provisional list comes into force, and the proportion of the current rate charged as before provided in this section, shall be levied accordingly; but if when the next revision of the valuation list takes place the list as approved and altered on appeal contains a smaller value for the hereditament comprised in a provisional list than the value stated in such provisional list, the amount of rate or tax which has been overpaid in consequence of the larger value having been stated shall be repaid or allowed:

"11. Nothing in this section shall affect the value on which any rate is made, or sum is assessed, or contribution required, which is made, assessed, or required on the totals of the gross or rateable value of parishes or unions."

The Queen v. *East and West India Docks Co.*

the meaning of section 46 of the Valuation (Metropolis) Act, 1869 (1), was, subject to the question of the omission of the company's hereditaments hereinafter mentioned, duly made and deposited by the overseers of the said parish, in which were included divers other hereditaments in the said parish. The said overseers did not include in the said supplemental list the said hereditaments of the said company, or any of them, or the gross or rateable value thereof.

The said company served on the clerk of the assessment committees of the aforesaid parishes respectively, and on the overseers, notices that they were aggrieved by the said omission, and that they desired that the supplemental list should be corrected by the insertion therein of the said hereditaments with a lower assessment.

The said assessment committees heard counsel for the said company on their objection and requirements. With a view to proving that there had been an alteration within the meaning of section 46 entitling the company to a revision of the valuation list, the company, by their counsel, tendered in evidence their books and balance-sheets for the years 1874 to 1881 inclusive, and offered to verify, by the testimony of witnesses, the facts and figures therein contained, and contended that the said books and balance-sheets shewed that there had been a continuous and a considerable decline in the profits of the company, extending over the said several years down to and including 1881, and that an important portion of such diminution had occurred during the preceding twelve months; and that, under the circumstances stated, an alteration within the meaning of section 46 had taken place. No evidence other than as above mentioned was tendered.

The assessment committees respectively resolved "That the committees decline to insert the property of the East and West India Docks Company in the supplemental valuation lists of Poplar and Bromley, believing that no such alterations have been made in the value of such property as is contemplated by the Valuation (Metropolis) Act, 1869."

Thereupon the said company duly appealed to the Court of Assessment Sessions, and served the said assessment committees with notices thereof. On the hearing of the said appeal, the assessment committees appeared as respondents in support of their decision.

On the said hearing, by agreement between the parties, no further evidence was tendered by either side; but the opinion of the Assessment Sessions was asked upon the following questions:—(1) whether the evidence tendered to the assessment committee, or any and what part thereof, was relevant and admissible; if any, then (2), whether such relevant and admissible evidence tendered, if proved, was sufficient to establish an alteration within the meaning of section 46; (3) whether, assuming an alteration within the twelve months established, the company were therefore entitled to have the present actual value ascertained and inserted (as was contended by the company), or only to have the values standing in the valuation list reduced by the amount of the alteration in value, if any, occurring within the preceding twelve months, and to have such altered values inserted in the supplemental list (as was contended by the assessment committees). The company duly applied to the Justices in Assessment Sessions to direct a valuation of the said hereditaments under section 36 of the said Act. It was agreed that the balance-sheet for the year 1881 should be taken as though made for the twelve months preceding the said supplemental list objected to, saving all other (if any) just exceptions thereto. (The said company's balance-sheets were annexed to and formed part of these cases.)

It was contended for the company that the whole of the evidence so tendered was relevant and admissible, and that such evidence, if proved, was sufficient to establish, and did establish, that an alteration had taken place within the preceding twelve months within the meaning of section 46 of the said Act; and that, it being thus established that an alteration had taken place, the company were entitled to have the hereditaments valued at the present actual value, and such value entered in the supplemental list. It was further contended, in the

alternative, that the company were, at all events, entitled to a reduction in the valuation list in respect of the diminution of profits occurring during the preceding twelve months.

It was contended for the assessment committee that the company were concluded by the quinquennial valuation made in 1880 as to the value of the said hereditaments at that date, and also by the supplemental list of 1881 as to no alteration having occurred in the value in the twelve months to which the said supplemental list referred, and that the said company could not go behind either of the said lists, and that the evidence as to a falling off in the years 1875 to 1881 was consequently irrelevant and inadmissible, and that none of the evidence tendered was relevant and admissible, or, if any, only such, if any, as shewed a falling off within the preceding twelve months between April 1881 and April 1882; and that such last-mentioned evidence was not, nor was the whole of the evidence tendered, even if relevant and admissible, sufficient to establish an alteration within the said preceding twelve months, April 1881 to April 1882, within the meaning of section 46 of the said Act; and that even if the said evidence did establish an alteration within the said twelve months, the company were not therefore entitled to have the said hereditaments valued and their present actual value entered in the supplemental list, but only to have the quinquennial values reduced by the amount of the alteration in value, if any, occurring within the preceding twelve months.

The Court made an order in each case that, the whole of the evidence mentioned in the above case, and which was tendered to the assessment committee, being, in the opinion of the Court, relevant and admissible, and, if proved, sufficient to establish an alteration within the meaning of section 46 of the said Act; and the appellants being entitled to have the hereditaments valued at their present actual value, and such value entered in the supplemental list, and not merely any alteration in value which might have taken place during the preceding twelve months; the said supplemental valuation list of each of the said parishes be altered accordingly.

The point of law reserved for the opinion of the High Court was this:—Whether the said decision and order, or any and what part thereof, is good.

Sir Hardinge Giffard, Q.C. (with him *Marriott, Q.C.*, and *Kenelm Digby*), shewed cause.—The property here is different from that as to which it can be asked what would a hypothetical tenant give for the premises *communibus annis*, and it is for that reason that evidence of the profits made in certain years was tendered, to build up, as it were, the hypothetical tenancy; and the element of profits is one of those upon which the tribunal is asked to say that the property has gone down or is increased in rateable value. The question is, whether the committee had a right to reject entirely the investigation whether the diminution in profits arose from circumstances that reduce the rateable value of the company's premises. If instead of vessels coming as near to London as possible it had become usual for them to go no farther than Gravesend, and the profits thereby had been reduced, this would cause an alteration in the rateable value of the company's docks; but if the committees are right, the company cannot shew this. The evidence is admissible, and shewed, as a matter of fact, a continued diminution in receipts. The object of the Act is not to prevent valuation other than quinquennial, but to insure valuation every five years at least —The Union Assessment Act, 1862 (25 & 26 Vict. c. 103); ss. 5, 15, 22 and 25, are in marked contrast with the later Act, and should be looked at in construing the Valuation (Metropolis) Act. By that statute the alteration must be by reason of structural change, the words "or otherwise" being *ejusdem generis*. By altering the words in the later Act, the Legislature evidently intended to give the section a wider scope. In section 47 (1) the *ejusdem generis* construction is not to be applied. They are distinct and independent alternatives. The alteration to be shewn is an alteration in any of the matters required to be stated in the valuation list, and the gross rateable value is one of them. This was the ground of the decision in *The*

Queen v. *St. Mary, Islington* (2). The supplemental list is to be in the same form as the valuation list—that is, it must shew the rateable value—and it is to be treated in the same way as the valuation list; and it is not to shew the gross and rateable value with reference to any antecedent valuation, but to shew what is altered—and that, in this case, is the gross rateable value; and all that is to be shewn by the supplemental list is any other alteration which has taken place during the preceding twelve months in any of the matters stated in the valuation list, but, nevertheless, the said list shall contain only the hereditaments affected by such alterations. If the value in the valuation list was to be fixed for five years, why was there no distinct provision to that effect? There is no actual conclusiveness, as it is expressly subjected to the supplemental list. An alteration, whether of structure or rateable value, must be inserted in the supplemental list. It has not been so inserted in this case. The words "alteration in the preceding twelve months" mean alteration from the value on which rates have been paid for the preceding twelve months.

The Solicitor-General (*Sir F. Herschell, Q.C.*) (with him *Holl, Q.C.*, and *Fullarton*), in support of the rules.—The effect of the order of Quarter Sessions would be practically to destroy the effect and value of quinquennial valuations, and comes to this —that if you can shew any alteration at all, such as that the premises would let for less or that the profits were less in any one year, the quinquennial valuation is to be disregarded, and the premises must be assessed anew as if there had never been any assessment before of the particular premises. The Valuation (Metropolis) Act, 1869, ss. 46 and 47 (1), deals with the quinquennial valuation and the procedure for supplemental lists. The scheme of the Act is that, instead of there being constantly changing valuations continually made from time to time, there shall be a valuation which shall stand for five years, subject to variation in certain cases.

In this case the quinquennial valuation made in 1880 must be taken as the starting point. In 1881 a supplemental list was made, but these hereditaments were not inserted in it, nor was any application to insert them therein made. The supplemental list of 1881, therefore, is conclusive against the company, and all that they are entitled to shew is, if they can, that within the meaning of this Act there has taken place an alteration within that preceding twelve months, and that by reason of such alteration the hereditaments ought to be inserted in the supplemental list as reduced in value.

They are only entitled to deduct from the value as assessed in 1880 the amount of reduction they can shew to have taken place within the twelve months preceding their application to be inserted in a supplemental list. They are not entitled to go into the value at large and have that entered in the supplemental list, but only to shew an alteration (if any) in value that has taken place in the preceding twelve months, and have that deducted from the quinquennial valuation. According to the decision of the Assessment Court, if a man whose premises are assessed at 100*l.* at the quinquennial valuation can shew that an alteration to the extent of 10*l.* has taken place within the preceding twelve months, he is entitled then to shew that the quinquennial valuation should have assessed his premises at 50*l.* instead of 100*l.* But it is submitted that there is no right to a valuation *de novo*, because, if so, there is practically no quinquennial valuation—it stands for nothing. It must be assumed that the quinquennial valuation was correct, and any alteration in value during the preceding twelve months must be deducted from that. If it is shewn that from some cause a tenant from year to year would give so much less for the premises in this year as compared with last year, that is the measure of the alteration in value, and that amount he is entitled to deduct from the quinquennial valuation. The words of the statute preclude the idea of a fresh valuation.

The increase or decrease must arise from some definite cause, either affecting the structure or its relation to other struc-

(2) 48 Law J. Rep. M.C. 123; Law Rep. 4 Q.B. D. 309.

tures, or some change in the condition of things which has caused the reduction or increase—for instance, if premises become no longer of value as gasworks by reason of electricity superseding gas, or as a public-house by reason of the passing of a permissive bill. But evidence that a tenant this year could not be got at a rent equal to that at which he could be got last year does not shew an alteration within the meaning of the statute—a reduction in receipts is not of itself evidence of such an alteration. The receipts might be reduced by the fact of large expenditure on the premises, making them really more valuable. You must prove the cause first, and then shew the effect; but merely to shew the effect—namely, reduction of profits—is no evidence of reduction in value. It is no alteration, and no evidence of such alteration. The case relied on by the other side at the assessment sessions—*The Queen* v. *The New River Company* (2)—was a case of structural alterations, and therefore distinguishable from this, where the only alteration of which evidence was tendered is an alteration in the amount of receipts.

GROVE, J. (on July 23).—The only difference in these two cases is in the names of the parishes, and the points are the same in both: our judgment, therefore, in one will govern both. I am of opinion that the assessment committee are right, and that the East and West India Docks Company are not entitled by the statute to have their assessment reduced in the way for which they contend; and, further than that, the evidence which was tendered and given, though to a certain extent admissible, and possibly relevant evidence in a limited degree, was not sufficient evidence to entitle the assessment committee to adopt the mode of valuation which the appellants contend is the right mode within the meaning of this Act.

Now, the question really depends upon two sections of the Act. Possibly one section only really applies to this particular case, the 47th section: because, as was thrown out by my brother Manisty in the course of the argument, this is more a case within the 47th section than within the 46th section: the 46th section being applied to a supplemental list, which, as far as I can gather from the Act, is not made obligatory upon the application of any ratepayer of the union; whereas the 47th section seems to apply to an obligatory list being made out on the application of the party affected. As far as regards the question argued before us, however, that point does not appear to me to be material. At all events, it has not been argued by the counsel on either side, because the question which has been raised before us is really this, as far as I can express it—whether, when the quinquennial valuation has been made, and when a new valuation in any subsequent year has to be made, you can go behind the particular year and reopen and go into the valuation for the years intervening between the quinquennial valuation and that time; or whether you can go back altogether and shew the actual value of the property, within the meaning of the Act, that is, to the hypothetical tenant, its value *communibus annis*; or whether you can only go back to the preceding year. The argument used on behalf of the appellants seems to me to ignore the two important provisions of this Act. This argument was that the previous Act of the 25 & 26 Vict. c. 103, having prescribed an annual valuation, its provisions were directed to what was requisite for an annual valuation, and the alterations from the wording of the 25th section, which may be called the same section with reference to the then state of things as the 47th section is under the present Act, shewed that a very different construction was to apply to that of the 47th section of the present Act. The words of the 25th section of the previous Act are these: "Where by reason of any alteration in the occupation of any property included in such list, such property becomes liable to be rated in parts not mentioned in such list as rateable hereditaments and separately valued therein, and when and so often as it shall appear to the overseers that any rateable property included in such list has been increased or reduced in value since the valuation thereof, whether by building, destruction of building or other alteration in the condition thereof or other-

wise, the overseers of the parish in each of the cases aforesaid shall, as soon as conveniently may be, make a supplemental valuation list shewing the annual rateable value according to the judgment of the overseers, &c." Now those words are narrower, and make the latter portion of the words more to be construed in what I may call the sense *ejusdem generis* in the former than in the present Act. The 47th section of the present Act says this, in place, I may call it, of what I have read of the Act of the 25 & 26 Vict.: "If in the course of any year the value of any hereditament is increased by the addition thereto or erection thereon of any building, or is from any cause increased or reduced in value, the following provisions shall have effect:" Now there the words "increased or reduced from any cause" no doubt are larger than any words in section 25 of the preceding Act; but it appears to me that they are not so large as is contended for the respondents, and must not be read as it is contended for the respondents they must be read—thus, "if from any cause they are increased or reduced in value." That is, never mind the cause—you need not go into the cause—if they are increased or reduced in value, that is enough. They cannot be increased or reduced in value without some cause, and therefore, as you need not mind the cause, you need not go into that, but it is enough to say that they are increased or decreased in value. Now I do not read the section in that way, and for this reason, among others, that if the Act had intended to say that, it would have said, "If in the course of any year the value of any hereditament is increased or reduced, the following provisions are to have effect"—that would give all that the company require. The example of "the addition thereto or the erection thereon of any buildings" would have been totally unnecessary. All that would be necessary to shew would be that in some way or other the value in the present year is less than it was in the preceding year, and both sections would have been unnecessary. All that would have been said is, "if at any time the parties complain of the quinquennial assessment, they may, by shewing that the value has been altered in subsequent years up to the next quinquennium, get it altered in the value within the meaning of the Act." Why should we have the words "if in the course of any year the value"—shewing that it is confined to a particular year, as it seems to me, otherwise there would be no use in using those words—"the value of any hereditament is increased by the addition thereto or erection thereon of any building"—why should those words be put in? Does it not shew there must be some cause, something which is to satisfy an assessment committee, or an arbitrator or a jury, or whatever may be the tribunal, that something has been done, added to or subtracted from, or some alteration made within a particular year to which the section applies. But when we come to the 46th section, to my mind, it seems still more clear. Now the 46th section (1) applies to the supplemental list, but it appears to me that the argument for the dock company in this case really ignores the words of that section. What meaning are we to give to "alterations which have taken place during the preceding twelve months"? According to the argument for the dock company it must mean any alteration during the preceding four years, provided it existed within the last year, could be enquired into; and not only that, but I do not see how you could avoid going even beyond the last quinquennial valuation, if you are to take the actual value of the premises and the real value of them altogether. You may shew the quinquennial valuation is wrong, and that the premises never have been, either since the quinquennial valuation or before the quinquennial valuation, of the value which they are put down at in the quinquennial valuation; and therefore the quinquennial valuation would be a mere useless thing, because you may reopen it during any of those four years, and not only reopen it, but you may go into the year before it was made, and shew that the property has never reached anything like the quinquennial value, that the whole thing is a mistake; so that instead of this "shewing the alterations which have taken place during the preceding twelve months" it should have been written in the statute,

"and shewing any mistake which may have been made in the quinquennial valuation, and shewing the real value of the premises to a tenant *communibus annis*," which is something quite different from that, "and that the premises or hereditament are to be assessed accordingly." I cannot ignore the words "during the preceding twelve months" in section 46, or "if in the course of any year the value of any hereditament is increased or reduced" in section 47. It appears to me they mean the same thing, and that the object of the statute is this, that there is to be a five years' valuation. I agree with the argument in part, but only in part, that five years was to prevent the old valuations remaining when great changes have taken place in the value of premises, and it was to keep them always alive, and keep them, if I may say so, fairly up to the existing period, and it was thought that five years was a fair time for revaluing premises. It would have been costly and troublesome to have valued them every year, and five years was thought to be a fair time for a general valuation; but then it was intended to give this benefit on the one hand to the party who would have to pay the rates, and on the other to those who have to insist on the rates—that if there was a change, a substantial change, in the value of the hereditament, tested by what it would be worth—I am going now to use my own language—to a hypothetical tenant *communibus annis*, the parties should get the benefit of that change, and this seems to me to give full force to the Act, and to completely satisfy the idea of quinquennial valuation; whereas, if we are to be able to open the thing in each of those four years, the quinquennial valuation is really no more than the valution in any of the other years. A quinquennial valuation would be little more than a matter of form, if it had to be gone into every year during a quinquennium, if the whole thing should be repeated and gone into *de novo*; and it would give no meaning at all that I can see—no rational meaning—to those two sections, namely the words in the 46th section, "alteration which had taken place during the preceding twelve months," and the words of the 47th section, "if in the course of any year the value of any hereditament is increased or reduced." Those words appear to me to be essential; they appear to me to have a meaning, and a very intelligible meaning—namely, you shall take the quinquennial valuation, and take that as your basis. If you can shew there has been a substantial change between that period and the next or the following year, going on up to four years, then you shall have a right to have the premises assessed according to that—on the one hand, if they have increased in value, the parish will take care to have the assessment altered; if on the other hand they have been reduced in value, the ratepayer will take care to have the assessment altered. It is to meet either case, and to give them the opportunity of shewing any change which may have taken place in the value from what they were valued at when the quinquennium began. I do not say that the mode of computation may not be a difficult one. It is a matter on which we are not asked, and which must be left to a jury—how you are to frame the reduction. There would be a great deal more difficulty in considering the Act in the opposite way; but still I do not say it is free from difficulty in the mode of application.

Now then see what was done in the present case. "The assessment committees heard counsel for the company on their objection and requirements. With a view to proving that there had been an alteration within the meaning of section 46 entitling the company to a revision of the valuation list, counsel tendered in evidence the books and balance-sheets of the company for the years 1874 to 1881 inclusive, and offered to verify, by the testimony of witnesses, the facts and figures therein contained, and contended that the said books and balance-sheets shewed that there had been a continuous and a considerable decline in the profits of the company, extending over the several years down to and including 1881, and that an important portion of such diminution had occurred during the preceding twelve months; and that, under the circumstances

stated, an alteration within the meaning of section 46 had taken place. No evidence other than as above-mentioned was tendered." It is stated in another part of the Case that that was done by an agreement. Therefore it was not as if they could have tendered other evidence and did not, but that it was agreed that that evidence should be taken as a test of the contention on each side. No other evidence was tendered. One question to us is, is that evidence admissible, and is it relevant? I think that with regard to the last year, the year preceding, it is both admissible and relevant; but I do not think it is sufficient. We are asked if such last-mentioned evidence, if relevant and admissible, was sufficient to establish an alteration within the said preceding twelve months. I think it was admissible and relevant as to those twelve months, but not sufficient. It is necessary to shew two things: it is necessary to shew diminution in the value within the meaning of the Act—which is, as I said before, the value to the tenant *communibus annis*, and it is necessary, to my mind, within sections 46 and 47, to shew that the diminution of value is attributable to something which has occurred or which has taken effect since the quinquennial valuation—that is, an alteration in circumstances. What circumstances may be sufficient, it is not necessary for me to go into, whether they must be *ejusdem generis* with structural alteration, such as an addition thereto or an erection of any building thereon, or not. Each case must depend upon itself; but some alteration of circumstances must be shewn, something which was not in existence or had not produced any effect upon the premises at the quinquennial valuation, and which had taken place during the preceding twelve months. It may be that the original root of the alteration dated further back, and that the effect was not perceivable within the twelve months. How far that may be so is unnecessary for me to say on the present occasion. Some cause must be shewn: something which makes the basis of the valuation different from that which was taken at the time of the quinquennial valuation. Then it is necessary, in addition to that, to shew that there has been an alteration in value; and, for the purpose of shewing there has been an alteration in value within those twelve months, the evidence given, to my mind, is admissible and relevant. But a mere alteration in profits is not enough; a mere alteration shewing that they had received less money within the last twelve months than they had received during the preceding year would not be enough. It may be an accidental fluctuation in the business from some adventitious cause having nothing to do with the valuation of the premises, therefore not sufficient to base it upon at that portion of time at which I alone think it admissible—namely, the last twelve months. Therefore, on that question, I am of opinion that the evidence, although admissible and relevant, was not sufficient to establish an alteration within the meaning of the 46th and 47th sections. Then, secondly, with regard to the opinion of the sessions that "the appellants are entitled to have the hereditaments valued at their present actual value, and such value entered in the supplemental list, and not merely any alteration in value which may have taken place during the preceding twelve months"—I answer, that the company are not entitled to have them valued at their present actual value, and have that value entered in the supplemental list; but all that can be entered is any alteration in value which may have taken place during the preceding twelve months. I do not think there is any other question that has been argued. We are not asked as to any mode of settlement or apportionment. My judgment, therefore, is in favour of the respondents.

MANISTY, J.—I am of the same opinion in the result; and as this is a question of some little difficulty and some general importance, I propose to go somewhat more at length into the reasons upon which I have arrived at the same conclusion. The Act of 1869 seems to me to be exceedingly well drawn. I entirely agree in the observations made by the Lord Chief Justice in the *New River Case* (2) that it is more accurate and intelligible than most of the Acts we have to deal with; and, adhering

to the plain and popular sense in which this Act of Parliament is couched, I have, I confess, no difficulty in dealing with it, and forming what, to my mind, is a well-founded opinion dealing with the Act itself.

Now no doubt the Act of 1862 has some bearing upon the Act of 1869; but this is no such difference as to induce me to put a different construction upon the Act of 1869 from that which, if there were no Act of 1862, I would put upon it. The scheme of the Act of 1862, of course, was somewhat different, and the language was sometimes difficult to deal with. For instance, in section 15 of the Act of 1862, the gross estimated rental was to be "the rent at which the hereditament might reasonably be expected to let from year to year." It was necessary to put a very large construction upon those words, and that has been rectified in the Act of 1869, which does assist on esomewhat in dealing with the subsequent sections, because the gross value in the Act of 1869 means, not the rent at which it may be let from year to year, but the rent which a tenant might be reasonably expected to pay taking one year with another; and that is the fundamental principle of my judgment. Now the next thing is, there is to be a quinquennial valuation, and the provisions with respect to it certainly are exceedingly careful, and to my mind very clear. The overseers are to make a valuation list, and you will find throughout this Act there are three things clearly and very distinctly mentioned; and they are, in form at all events, and somewhat also in substance, different things. There is the valuation list—that is, the quinquennial valuation list—and that is to last, subject to the provisions afterwards found in the Act, for five years, and to be conclusive evidence of the gross value and of the rateable value of the hereditaments, subject always to the provisions afterwards mentioned. Now what are those provisions? The first is a supplemental list in section 46; and I must say I think the appeal is misconceived altogether in form, and it is, in substance, a proceeding under section 47. Section 46 clearly contemplated the overseers preparing the supplemental list. There is nothing in that to make it compulsory; but in this case they did prepare a supplemental list, which, of course, was subject to revision by the assessment committee and to an appeal to the Quarter Sessions; and, strange to say, the form in which the present appeal came before the Sessions is an objection to the omission from the supplemental list. There is no appeal given for such a thing. You may appeal against the supplemental list, and those who are affected by it have a right to appeal; but the form in which this appeal is presented to the sessions is as an appeal against the omission from the supplemental list. And you will find this, that in section 46 provision is made for the overseers (if necessary) making a supplemental list, and then the principle on which it is to be made out is in these terms—that it is to be in the same form as the valuation list. But not that only. It has been argued that it must be in the same form, and therefore you must be strictly confined to the form given in the schedule to this Act. It is no such thing. It is put in the same form as far as it goes, and it shall shew all the alterations that have taken place during the preceding twelve months. That would not be in the valuation list originally, and therefore the form is for a valuation list; but you shall take the form so far as it goes, and shew the alterations, and then the parties affected by that may appeal. The list shall shew all the alterations that have taken place during the preceding twelve months in any of the matters stated in the valuation list, but shall contain only the hereditaments affected by such alterations. And this supplemental list prepared by the overseers has to undergo, and it is provided that it should be subject to, all the forms, "and the same proceedings shall be had in the case of a supplemental list and a new valuation list," which means the quinquennial valuation list, "as are directed by this Act and the Acts incorporated herewith in the case of the valuation list made in the first year after the passing of this Act." Everything in section 46 points to the appeal being against the alterations made by the overseers. But then you come to section 47; and, except that the

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language is altered, I am not at all clear that it is not precisely the same in substance so far as the alterations are concerned, because it provides that "if in the course of any year the value of any hereditaments is from any cause increased or reduced in value, the following provisions shall have effect." Now what are those provisions? The overseers may and, on the written requisition of the assessment committee, or of any ratepayer of the union, or of the surveyor of taxes for the district, shall send to the assessment committee a provisional list containing the gross and rateable value, as so increased or reduced, of such hereditaments." Then what is to take place upon that?—and this is the real substance of the proceeding that was taken, because, although in form they objected to the omission, they went on by the requisition to do that very thing which is provided for in sub-section 1 of section 47. They required them to alter it in a specific manner. They gave them notice that they were aggrieved by the omission from that list; but, further, they desired the supplemental list should be corrected; so that, in substance, they really did resort to section 47. Now what is to be done upon a requisition such as that? It is, to my mind, very clearly laid down. The overseers are then to send to the assessment committee a provisional list. Now you have three lists—the valuation list, the supplemental list, and the provisional list—and provisions are made here for all three, and they are clear and very distinct, if people would only follow them. They shall send to the assessment committee a provisional list containing the gross and rateable value as so increased or reduced. Well, what then is to be done? If the overseers make default in doing it, the committee shall appoint a person to make out a provisional list, and then, on receipt of the list, the committee shall act as provided. Then the committee hear and determine all objections, and then the provisional list, by sub-section 8, shall have operation from the date of the service, and shall continue in force until the first list (supplemental or otherwise) which is subsequently made comes into force. And "upon a provisional list coming into operation, the overseers shall make such entries in the rate book for the then current poor rate as shall bring the same into conformity with such list." There are, therefore, three sets of provisions clearly and distinctly applicable to three different lists; and in substance, no doubt, this appeal in form is against an omission from the list; but, in substance, it is upon the requisition of the ratepayers to have the value reduced. That being so, what happens? Evidence is given with regard to the income of this company for a number of years, and they do not confine themselves to an alteration in the value in the preceding year. Then the evidence laid before the sessions—and I suppose before the assessment committee also—was to the effect that if you look to the income of this company during several years, going back to the year 1874, you will find that there is a great difference in the income of that company. Apply the Act to that. You are to assert and prove an alteration within the preceding twelve months, or in any one year. Now it seems to me that they were quite wrong in taking the evidence applicable to all these years, although that evidence might be admissible, with a view, as a step in the case, to shew that there was an alteration of some sort in the year preceding—that would be in the year 1881—which did reduce the value. Now if you look at this evidence you will find from the beginning to the end that the expenditure varies immensely, and it only shews the fallacy of applying the evidence during these years to a case like this, which fallacy is apparent when you come to deal with what the assessment committee have to deal with. In the years 1878 and 1879 profits were considerably more reduced, not owing to any particular cause, but by the expenditure of more money on labour—perhaps they increased their works, or they had a vast number of things which cost additional expenditure. But, then, what the assessment committee have to look to is the difference, if any, in the rateable value—or, rather, first, the difference in the rent which a tenant will give *communibus annis*, not for one year. That is the principle. Now, first take 1880 or 1881, or any year you like, and say, "Well, there has been a drop this year of 10,000*l.* or 20,000*l.*" To my

mind, it would be utterly wrong to say that this is to be deducted at all. You would have to see how that alteration, if it be an alteration, would affect the letting, not of that year, but the letting of a tenant taking one year with another—taking the good and bad all through. That is what they have to do. The greatest mistake would be made if they say: "We go into the annual value of this year, and will prove it by shewing the income has been so much less this year than last year, and so much less than it was the year before." I do not deny that it is evidence that there has been a very large reduction in the income, unless it is accounted for; and it may be, if they have gone and laid out a great deal more money on the property that year, it would not affect the letting value a bit, but would rather increase it; and the very reduction in the net profit increases the rateable value of property very often. But, then, has there been a substantial alteration which has caused the letting value to be altered; and, if so, to what extent? I do not myself think it necessary to say whether, if there be a falling off of 10,000*l.*, that is to be deducted from the quinquennial value. I think that would be an utter mistake. You have to look to see what the cause is, and if that cause goes actually to increase the value, though it may not increase the income, that is the thing which the assessment committee have to look at. Whether, therefore, you take it upon section 46 or section 47 of the Act of 1869, it seems to me the result is the same. You are to see whether in the previous year there has been an alteration in the value—that is to say, not the value for that year according to the alteration in income, but whether an alteration has taken place which reduces the value which the tenant may be supposed to give; and, to my mind, that gets rid of a great deal of difficulty in saying whether, because there was 91,000*l.* that year, and this year there has only been 80,000*l.*, they ought to deduct a proportion. I do not myself think that is the true principle on which we ought to act; but I am very clear upon this, that the committee were wrong in admitting evidence of preceding years. They are bound to see what the alteration was in the twelve months preceding, or in the year, whether you take section 46 or section 47, and then to say, if it be an alteration, what is the consequence of this upon the letting value—the statutory value. Then they go on to say they find that it was "relevant and admissible, and that such evidence, if proved, was sufficient to establish an alteration within the meaning of section 46 of the Act; and, further, that the appellants are entitled to have the hereditaments valued at their present actual value, and such value entered in the supplemental list, and not merely any alteration in value which may have taken place during the preceding twelve months." So that they ignore the very words of the Act; and then they order the supplemental valuation list to be altered by inserting hereditaments, describing them; and then they direct a valuation, with respect to which this appeal is made, according to the decision and upon the principle hereinbefore set forth. They are to value according to the principle hereinbefore set forth—that is to say, they are to ascertain, not the value owing to altered circumstances, but the present value. The principle on which the assessment sessions have gone seems to me to have been the wrong one, and therefore the question should be answered against them.

Rules to quash the orders of the assessment sessions made absolute, with costs.

Solicitors—Freshfield & Williams, for appellants; J. W. Marsh, for respondents.

[IN THE COURT OF APPEAL.]

1883. Nov. 9. THE MAYOR AND CORPORATION OF PETERBOROUGH (*appellants*) *v.* THE PARISH OF WILSTHORPE AND THE ASSESSMENT COMMITTEE OF THE STAMFORD UNION.*

Practice—Court of Appeal—Jurisdiction to entertain Appeal—Case stated for Opinion of Queen's Bench Division—Baines's Act, 12 & 13 *Vict. c.* 45. *s.* 11—*Poor Rate—Interlocutory Appeal—Judicature Act*, 1873, *s.* 19.

After notice of appeal against a poor rate had been given to the Court of Quarter Sessions, the parties agreed, under the provisions of 12 & 13 *Vict. c.* 45. *s.* 11, *to state a case for the opinion of the Queen's Bench Division, judgment to be entered by the Court of Quarter Sessions in conformity with that opinion*:—Held, *that the opinion given by the Queen's Bench Division was an order within the meaning of the Judicature Act*, 1873, *s.* 19, *which was subject to appeal; also, that the order was an interlocutory and not a final order.*

Appeal by the respondents from a decision of the Queen's Bench Division upon a Special Case.

The appeal was brought in the Court below by the mayor and corporation of Peterborough against a rate made for the relief of the poor for the parish of Wilsthorpe, whereby the appellants were rated for the pumping station of Peterborough waterworks and pipes in that parish on the assessed sum of 864*l.* gross estimated rental, and 720*l.* net rateable value.

After notice of appeal to the Quarter Sessions had been duly given, the parties agreed that a Special Case should be stated for the opinion of the Queen's Bench Division, under the provisions of 12 & 13 Vict. c. 45. s. 11; and judgment in conformity with the decision of the High Court and for such costs as the Court might adjudge was to be entered by the Court of Quarter Sessions.

The Queen's Bench Division (Williams, J., and Smith, J.) gave judgment for the appellant corporation, being of opinion that the proper mode of assessment was to enter the rateable value as nothing.

The respondents appealed.

Crump, for the corporation, took the preliminary objections—first, that the appeal was final and not interlocutory, and therefore could not be heard by the Court of Appeal consisting of two members only; and secondly, that by the terms of the agreement the Special Case was stated merely for the opinion of the Queen's Bench Division, and that the decision of that Court was not a judgment or order within the meaning of section 19 of the Judicature Act, 1873. He referred to *The Overseers of Walsall* v. *The London and North Western Railway Company* (1).

F. Marshall, contra, was not called upon to argue.

BRETT, M.R.—I have not the least doubt about this point. The question is by statute allowed to be stated for the opinion of the Queen's Bench Division, if the parties shall so agree, in order that the Queen's Bench Division may adjudicate upon it so as to bind the parties. The case is then to be sent down for judgment to be entered by the Quarter Sessions. That brings the case within the decision in *The Overseers of Walsall* v. *The London and North Western Railway Company* (1). An adjudication which is binding upon the parties is not what is technically called a judgment, but it is an order within the meaning of section 19 of the Judicature Act, 1873. An appeal, therefore, lies from such an order. I am also of opinion that the order is not a final but an interlocutory order. The case is to be sent back for judgment to be entered by the Court of Quarter Sessions. We therefore have jurisdiction to entertain the appeal.

BOWEN, L.J.—I agree.

Objections overruled.

The appeal was then heard, and dismissed upon the ground that the case could not

* *Coram* Brett, M.R., and Bowen, L.J.

(1) 48 Law J. Rep. M.C. 65; Law Rep. 4 App. Cas. 30.

be distinguished from that of *The Mayor of Worcester* v. *The Assessment Committee of the Droitwich Union* (2).

Solicitors—Speechly, Mumford & Landon, agents for W. D. Gaches, Peterborough, for appellants; Joseph Mote & Son, agents for R. M. English, Stamford, for respondents.

1883. Dec. 12.

COX *v.* ANDREWS.

Gaming and Wagering—The Betting Houses Act (1853) *Amendment Act*, 1874 (37 *Vict. c.* 15)—16 *& 17 Vict. c.* 119.

The publication of an advertisement that any person will give information for the purpose of a bet, to be penal under the Act of 1874 *amending the Betting House Act* 1853, *must be in respect of a bet made in a manner which is penal under the Betting House Act* 1853.

Case stated under 20 & 21 Vict. c. 43, on appeal from two convictions at the Bow Street Police Court under sub-sections 1 and 2 respectively of section 3 of the Betting House Amendment Act, 1874.

It was proved before the magistrate that the appellant was the proprietor and publisher of a newspaper called the *Licensed Victuallers' Gazette and Hotel Courier*, and that he published in a number of such newspaper, bearing date the 31st of March, 1883, the following paragraph:—

"To our readers: special and important.—Centaur scored his first success of the season when he gave Knight of Burghley for the Lincoln Handicap last Tuesday. Our correspondent will use every effort to follow up his success, and those of our readers who want the most reliable and latest news from Northampton next week should not fail to avail themselves of Centaur's Wire Finals sent direct from the course. They may rely on having something as good for the two principal events next week as they had in Knight of Burghley on Tuesday. Centaur's Finals cost but half-a-crown each, or the two days' racing five shillings, for which post-office orders or stamps must be sent to Mr. W. H. Cox, 17 Southampton Street, Strand, London. The subscription to Centaur's Wire Finals for the season, which includes all the principal races, is 3*l.* 10*s.*"

"Centaur" referred to in this paragraph was one of the correspondents of the newspaper regularly employed by the appellant in supplying him with news relating to horse-racing.

By 37 Vict. c. 15, entitled "An Act to amend the Act 16 & 17 Vict. c. 119, intituled an Act for the Suppression of Betting Houses," and providing that it shall be construed as one with that Act (in this Act referred to as the principal Act), it is enacted by section 3 as follows:—

"Where any letter, circular, telegram, placard, handbill, card or advertisement is sent, exhibited or published—

"(1) Whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will, on application, give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the principal Act, or will make on behalf of any other person any such bet or wager as is mentioned in the principal Act; or

"(2) With intent to induce any person to apply to any house, office, room or place, or to any person, with the view of obtaining information or advice for the purpose of any such bet or wager, or with respect to any such event or contingency as is mentioned in the principal Act; or,

"(3) Inviting any person to make or take any share in or in connection with any such bet or wager:

"Every person sending, exhibiting or publishing, or causing the same to be sent, exhibited or published, shall be subject to the penalties provided in the 7th section of the principal Act with respect to offences under that section."

The Act 16 & 17 Vict. c. 119, after reciting that "a kind of gaming has of

(2) 46 Law J. Rep. M.C. 241; Law Rep. 2 Ex. D. 49

Cox v. *Andrews.*

late sprung up, tending to the injury and demoralisation of improvident persons, by the opening of places called betting-houses or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices, or by other persons acting on their behalf, on their promises to pay money on events of horse-races and the like contingencies," provides by sections 1 and 2 that no house, &c., is to be kept open for the purpose of the owner or occupier betting with other persons, on pain of being declared a common nuisance and a statutory gaming-house; and, by section 3, imposes a penalty on the owner or occupier of a betting-house; and, by section 4, on persons receiving money on condition of paying money on the event of any bet.

Clarke, Q.C. (*H. E. Stansfeld* with him), for the appellant, submitted that the words "such bet or wager as is mentioned in the principal Act," in both sub-sections under which the defendant had been convicted, meant a bet or wager which would impose liability under the principal Act, namely, a bet in a betting-house. No such bet was advertised in this case.

Mead, for the respondent, contended that such bet as is mentioned in the principal Act meant bet "of or relating to any horse-race or other race, fight, game, sport or exercise mentioned in section 1 of the principal Act." This is the only reasonable construction.

MATHEW, J.—I am of opinion that these convictions must be quashed. As the learned counsel pointed out, any other result would lead to absurd consequences, and I shall not, unless coerced by very clear language, depart from a reasonable construction of the statute. The legislation on this subject was, in my opinion, directed at a real grievance. Cockburn's Act was directed to suppressing betting-houses, as appears from the preamble, and the keeping such houses and receiving money in advance in them is prohibited. Then comes the Act in question, which is to be construed as one with Cockburn's Act. By the 1st sub-section the information advertised must be in respect of any such bet as is mentioned in the principal Act. The alternative offence in sub-section 2 requires an intent to induce any person to apply at any house. What is a "bet or wager, or event or contingency, mentioned in the principal Act"? It is one made in "a house, room or other place, opened, kept or used" for the purpose of betting. If the words were extended further, any one inserting an advertisement that he would give information about a foot-race would be liable to penalties.

DAY, J., concurred.

Solicitors—Henry Rutter & Son, for appellant; Wontner & Sons, for respondent.

1883. Dec. 1. } GULLY (*appellant*) *v.* SMITH (*respondent*).

Highway — Obstruction — Omission to remove—Highway Act, 1835 (5 & 6 *Will.* 4. *c.* 50), *s.* 72—"*Wilfully Obstruct.*"

Magistrates convicted the appellant of the offence of "wilfully obstructing the free passage of a highway," under 5 & 6 *Will.* 4. *c.* 50. *s.* 72, *although the appellant had not done any act of obstruction:*— Held, *that an omission to remove an obstruction after notice to remove it might amount to wilful obstruction.*

Case stated by Justices under 20 & 21 Vict. c. 43 and the Summary Jurisdiction Act, 1879.

At Petty Sessions held at Axbridge, in the county of Somerset, the appellant was charged, on the information and complaint of the respondent, the surveyor of highways of the district of Axbridge, with having unlawfully and wilfully obstructed the free passage of a highway there, by allowing soil and stones to remain on such highway after notice from the respondent to remove the same.

Gully v. *Smith.*

The charge was preferred under 5 & 6 Will. 4. c. 50. s. 72.

At the hearing the following facts were proved or admitted :—

The appellant was tenant of land bounded by the highway. The highway passed the appellant's land by a cutting, and against the soil of the appellant's land was a retaining wall. It did not appear who had built the wall; but the appellant had caused some repairs to be effected to it. The wall was very badly constructed; and during the winter of 1882 a portion of the wall, in consequence of the exceptional wetness of the season and of the pressure of the bank, subsided, and several loads of stone and soil fell, a portion of which fell upon the metalled part of the highway and formed a dangerous obstruction. The respondent gave notice to the appellant to remove the obstruction; but the appellant, though he said he would remove it, had not removed it.

It was contended on behalf of the respondent that, by allowing the obstruction to remain after notice to remove it, the appellant had, within the meaning of the statute, wilfully obstructed the highway, although he had not done any positive act.

On behalf of the appellant it was contended that, even if he or his landlord were liable to repair the wall (which was not on his behalf admitted), he had not committed any offence under the Act, inasmuch as the obstruction was not caused by any positive act of his.

The Justices were of opinion that, inasmuch as the repairing of the wall by the appellant constituted an act of ownership, it was the appellant's duty to remove the obstruction, and that his failing to do so, after notice from the highway board, rendered such obstruction wilful, and was an offence under the section in question. They therefore convicted the appellant, and inflicted a fine of sixpence and costs.

The question submitted for the opinion of the Court was, "Whether the fact of the appellant failing to remove the alleged obstruction, without his having done any positive and wilful act whereby such obstruction was caused, and after repeated notices given by the respondent to remove the same, amounted to a wilful obstruction and was an offence under the said enactment."

Murch, for the appellant.—In order to establish an offence under the words of 5 & 6 Will. 4. c. 50. s. 72, "or shall in any way wilfully obstruct the free passage of any . . . . highway," it must be shewn that there was an act done, and an act purposely done—the enactment saying "wilfully"—*Walker* v. *Horner* (1), *Croasdill* v. *Ratcliffe* (2) and *Fearnley* v. *Ormsby* (3). Moreover, there was no omission by the appellant to do anything which he was in anywise bound to do. No duty was cast upon him to remove the obstruction. The statute enacts by section 26 that "if any . . . . obstruction shall arise in any highways . . . . from the falling down of the banks on the side of such highways . . . . the surveyor is required from time to time, and within twenty-four hours after notice thereof from any Justice of the peace, ... to cause the same to be removed." The appellant was under no obligation to repair the wall, even if he was the owner of the wall, unless he had expressly contracted to repair it, and such a contract cannot be inferred from his having on one or two occasions repaired the wall—*The Stockport and Hyde Highway Board* v. *Grant* (4). The presumption of law is that the duty of repairing the wall lay on the road authority—*Merivale* v. *The Exeter Road Trustees* (5).

Pitt-Lewis, for the respondent, was not heard.

Lord Coleridge, C.J.—I am of opinion that the magistrates were right in the determination at which they arrived upon the point which is submitted to us, and that their decision must be affirmed.

The only question submitted for our opinion is, whether the failure of the ap-

(1) 45 Law J. Rep. M.C. 34; Law Rep. 1 Q.B. D. 4.
(2) 5 Law Times Rep. N.S. 834.
(3) Law Rep. 4 C.P. D. 136.
(4) 51 Law J. Rep. Q.B. 357.
(5) 37 Law J. Rep. M.C. 40; Law Rep. 3 Q.B. 149.

pellant to remove the obstruction, after notice from the respondent to remove it, without any positive and wilful act on the appellant's part causing such obstruction, amounted to a wilful obstruction, and was an offence under 5 & 6 Will. 4. c. 50. s. 72. No question arises as to whether the facts of this case bring it within the decision in *Merivale* v. *The Exeter Road Trustees* (5), nor does any other question arise than that which I have stated.

It appears to me that, the appellant (who had repaired the wall and so afforded evidence of his being the owner of the wall) having, notwithstanding his having been repeatedly requested to remove the obstruction caused by the falling of the wall, failed to remove it, his case, notwithstanding his having done no positive act causing the obstruction, came within the words of section 72, "or shall in any way wilfully obstruct the free passage of any highway." Not fulfilling after notice a duty to remove an obstruction comes, I think, on the true construction of the Act, within the words "wilfully obstruct."

The conclusion at which I have arrived does not, I think, conflict with any of the cases which have been cited to us as bearing upon the construction of this section. In *Walker* v. *Horner* (1) the decision turned on the fact that what was complained of as an obstruction to the free passage of the highway did not involve any interference with the surface of the highway, and that there was therefore no obstruction *ejusdem generis* with the kinds of obstruction mentioned in previous parts of the section. The decision is not the less binding because the late Chief Justice dissented from it; but, for the reason I have given, the decision is inapplicable to the case before us. In *Croasdill* v. *Ratcliffe* (2) the question at issue was, whether rain-water, although in itself an innocent thing, became in the circumstances of that case "an offensive matter or thing" within the meaning of the Legislature. In *Fearnley* v. *Ormsby* (3) the decision was only that a surveyor who had purposely placed upon a highway materials for its repair which, by being left in the night-time without a light, became a dangerous obstruction, might be convicted of an offence under section 72, although he might be also liable to be convicted under section 56.

MATHEW, J., concurred.

Conviction affirmed.

Solicitors—Crowder, Anstie & Vizard, agents for Frederick Wood, Wrington, for appellant; Aldridge, Thorn & Morris, agents for Wade, Axbridge, for respondent.

[CROWN CASE RESERVED.]

1883. Nov. 24. } THE QUEEN *v.* HOLMES.*

False Pretences—Venue—Jurisdiction.

The prisoner, at N., in England, wrote and posted a letter to the prosecutor at a place out of England. The letter contained a false pretence, by means of which the prisoner induced the prosecutor to transmit to N. a draft for 150*l.*, *which he there cashed*:—Held, *that as the false pretence was made at N., where also the money obtained by means of it was received, there was jurisdiction to try the prisoner at N.*

Case reserved by Huddleston, B.

The prisoner was tried and convicted before me at the Assizes at Nottingham for obtaining from Louis Gabet Gabet 150*l.* by false pretences.

The prisoner, who was a machine manufacturer at Nottingham, had entered into a contract at Caudry, in France, to build at Nottingham for Gabet a Levas lace machine, to be completed within a certain time, to be paid for on certain terms, and to be sent to France to Gabet. The prisoner had written at Nottingham a letter containing the pretence, which was proved to be false, and in consequence of which the prosecutor had parted with his money.

The letter was written and posted at Nottingham, and received by the prose-

* *Coram* Lord Coleridge, C.J.; Denman, J.; Hawkins, J.; Williams, J., and Mathew, J.

cutor Gabet at Caudry in France, from whence a draft for 150*l.* was sent, according to and in compliance with the directions of the prisoner contained in his letter. The draft was received by the prisoner in Nottingham, and cashed there.

It was objected on the part of the prisoner that, as the false pretence was made in England, but did not operate to obtain the money until it reached its destination in France, no offence was committed over which the English Court had jurisdiction.

For the prosecution it was contended that, as the representation was made in England, and the money received there, the offence was within the English jurisdiction.

The Queen v. *Cooke* (1) was quoted.

The only question for the Court is, whether the prisoner could be indicted and tried for the offence in Nottingham. If he could, the conviction is to stand; if not, the conviction is to be quashed.

No counsel appeared.

LORD COLERIDGE, C.J.—I think, when the facts are ascertained, there is no reasonable doubt that the conviction was proper. The false pretence was made by means of a letter written and posted in Nottingham, and sent to a person in France, who, in consequence of it, sent by post to the prisoner in Nottingham a cheque payable in Nottingham. The prisoner received the money there, where also he was indicted and tried. The question reserved for us is, whether there was jurisdiction in the Court of Assize at Nottingham to try the prisoner for the offence. I think, without doubt, that there was. It appears, if authority be needed, from the case of *The King* v. *Burdett* (2) that when a letter such as the one in question is posted, the pretence is made; and in the present case, not only was the letter posted in Nottingham, but the money actually received there as well. Therefore, both the necessary ingredients of the offence took place in the county where the prisoner was tried. It may be that one important part of the offence taking place in Nottingham would be sufficient, but here both ingredients took place there. There can be no doubt, therefore, that the prisoner was properly convicted, and that the conviction must be affirmed.

DENMAN, J.—I am of the same opinion, and am disposed to think the case covered by *The Queen* v. *Cooke* (1).

HAWKINS, J., WILLIAMS, J., and MATHEW, J., concurred.

Conviction affirmed.

(1) 1 F. & F. 64.
(2) 4 B. & Ald. 95.

[CROWN CASE RESERVED.]

1883. Nov. 24. } THE QUEEN *v.* HOLLIS.*

Larceny—Possession obtained by Fraud.

The prisoner went into an inn, and asked the barmaid for sixpennyworth of whisky, for which he put down half-a-sovereign and received 9*s.* 6*d. in change. He then asked for the half-sovereign back, saying he thought he had change. The barmaid gave him the half-sovereign, but he did not return the* 9*s.* 6*d. The prisoner then put down* 10*s. in silver and a half-sovereign, asking the barmaid to give him a sovereign for it, which she did. The barmaid had no authority to pay over money without receiving the proper change and had no intention of or knowledge that she was so doing*:—Held, *that the prisoner was rightly convicted of larceny.*

Case reserved by the chairman of the Worcestershire Quarter Sessions.

At the last Worcestershire Quarter Sessions Thomas Hollis was tried before me on a charge of larceny of money the property of Charles Parkes. He was indicted jointly with William Wickes, who pleaded guilty.

The money, the subject of the indictment, was obtained by the trick commonly known as "ringing the changes." The

* *Coram* Lord Coleridge, C.J.; Denman, J., Hawkins, J., Williams, J., and Mathew J.

The Queen v. *Hollis, C.C.R.*

prisoners, Hollis and Wickes, went to an inn kept by the prosecutor. Wickes asked the barmaid for sixpennyworth of whisky. He put down a half-sovereign. The barmaid gave him 9*s.* 6*d.* change. Wickes then said, "Did I give you a half-sovereign. I wish you would give it me back. I think I have change." The barmaid gave him the half-sovereign, but he did not return the 9*s.* 6*d.* At that moment the other prisoner, Hollis, asked for a cigar, which the barmaid gave him. He handed her a shilling in payment, and she returned him the change. Wickes then gave the barmaid 10*s.* in silver (9*s.* 6*d.* of which was the change she had previously given him), and a half-sovereign, and asked her to give him a sovereign for it. She took the money to her master and received from him a sovereign, which she gave to Wickes. Wickes then asked her to fasten his glove, upon which Hollis remarked "Isn't he fussy." The two prisoners then left, and in a few minutes afterwards the barmaid discovered the fraud. The barmaid stated in her evidence that she did not intend to part with the sovereign except for full change of the prisoner's money, and her master also stated in his evidence that she had no authority to part with it except for full consideration.

It was contended by counsel for the prisoner that the barmaid had general authority to act for her master in such a matter as giving change, and that the transaction was complete before she discovered the fraud; therefore that the property in the money had passed, and that the prisoner could not be convicted of stealing it.

After referring to *The Queen* v. *M'Hale* (1) and *The Queen* v. *Middleton* (2) I overruled the objection; and the jury found the prisoner guilty, and in reply to questions put by me also found specially that the barmaid had no intention to part with the property in the sovereign except for full change of the prisoner's money, and that her master had given her no authority to part with it for other than full consideration.

The question reserved for the consideration of the Court is, whether under the circumstances above set forth the prisoner was properly convicted of larceny.

A. F. Godson appeared for the prosecution.

No counsel appeared for the prisoner.

LORD COLERIDGE, C.J.—I cannot doubt that it is larceny if a person fraudulently obtains from another the possession of money or property by means of a trick, or a series of tricks, without which the other would not have parted with it. It is clearly stealing, and the conviction must be affirmed.

DENMAN, J., HAWKINS, J., WILLIAMS, J., and MATHEW, J., concurred.

Conviction affirmed.

Solicitors—W. H. King, Stourbridge, for the prosecution.

(1) 37 Law J. Rep. M.C. 97; Law Rep. 1 C.C.R. 125.

(2) 42 Law J. Rep. M.C. 73; Law Rep. 2 C.C.R. 38.

1883. Nov. 27. } HARRIS (*appellant*) *v.* MAY (*respondent*).

Adulteration—Sale of Food and Drugs Act, 1875 (38 & 39 *Vict. c.* 63), *s.* 25—*Seller having purchased with "Written Warranty"—Running Contract.*

A defendant to a prosecution under the Sale of Food and Drugs Act, 1875, *s.* 6, *for selling as milk milk with added water, proved that what was sold by him was supplied to him under a written contract for the supply to him from time to time of pure milk*:—Held, *that that was not a purchase with a written warranty within the meaning of section* 25, *there being no written warranty as to the specific thing delivered to the defendant.*

Case stated by Justices at Petty Sessions.

An information was preferred by the respondent against the appellant, charging, in substance, that the appellant had, con-

trary to the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6, sold to the respondent, to his prejudice, as milk, a certain fluid which was not milk.

The respondent proved that the appellant sold to him as a pint and a half of milk that quantity of a fluid which contained with milk not less than ten per cent. of added water. On behalf of the appellant it was proved to the satisfaction of the Justices that the fluid sold by him to the respondent had been supplied to him (the appellant) under a written contract for the supply to him from time to time of new and pure milk; and it was contended that the fluid in question was therefore supplied to the appellant with a "written warranty" of its being pure milk, within the meaning of the words "written warranty" in section 25 of the Act; and facts having been proved to the satisfaction of the Justices which, if that contention were upheld, were the only other facts necessary for establishing a defence under section 25, it was contended that the appellant must under that section be discharged from the prosecution. The Justices were of opinion that the appellant had failed to shew that he had bought the milk with a "written warranty" within the meaning of the Act—referring, in giving their decision, to section 27, as making provision for forging or misapplying a warranty, or giving a false warranty, and as consequently shewing that section 25 was not intended to apply to a running contract for future supplies of goods, but to a document given with the goods, and referring also to *Rook* v. *Hopley* (1)—and they accordingly convicted the appellant. The question for the opinion of the Court was, whether the appellant had purchased the article in question with a written warranty within the meaning of section 25.

A. R. Poole, for the appellant.—The magistrates were wrong in holding that the appellant had not bought the milk with a written warranty. The appellant could, under the written contract proved by him, have sued the person who sold the milk to him for breach of warranty.

(1) 47 Law J. Rep. M.C. 118; Law Rep. 3 Ex. D. 209

Bernard Coleridge, for the respondent, was not heard.

LORD COLERIDGE, C.J.—The matter for our decision is, I think, a clear one. This Act, passed for the protection of the public health, says, by section 6, that a person who sells to the prejudice of the purchaser any article of food which is not of the nature, substance and quality of the article demanded by the purchaser, shall be liable to a penalty, subject to certain provisions contained in that section. Then section 25 relieves against that enactment a defendant who proves that he purchased the article as the same in nature, substance and quality as that demanded of him, and with a written warranty to that effect, that he had no reason when he sold it to believe that it was otherwise, and that he sold it in the same state as when he purchased it. It is, to my mind, perfectly clear that, if a vendor wishes as to any specific article to avail himself of the protection afforded by section 25, he must have a written warranty as to that specific article. That was not the case here. There may well have been on every occasion when milk was delivered to the appellant by the person supplying him with it a parol warranty that the milk was pure; but the Act requires a written warranty, and the appellant did not prove any written warranty of the specific article sold by him to the respondent.

MATHEW, J., concurred.

Conviction affirmed.

Solicitors—Darley & Co., agents for Clifton & Carter, Bristol, for appellant; H. M. Phillips, agent for T. Holmes Gore, Bristol, for respondent.

[IN THE HOUSE OF LORDS.]

1883. May 4, 7. June 4.

THE JUSTICES OF THE PEACE FOR THE WEST RIDING OF THE COUNTY OF YORK *v.* THE QUEEN (*on the prosecution of* THE MAYOR, ALDERMEN AND BURGESSES OF THE BOROUGH OF SHEFFIELD).

Highway—Liability to repair—Turnpike Road—Main Road—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 *Vict. c.* 77), *s.* 13.

A provision in a Turnpike Act forbidding the trustees to levy tolls or spend money on any portion of their turnpike road within a town does not prevent such portion from remaining part of the turnpike road within the meaning of the Highways and Locomotives (Amendment) Act, 1878, *s.* 13.

Nor does a road, in respect of which an agreement has been made under 21 & 22 *Vict. c.* 98. *s.* 41, *between a town and the turnpike trustees, by which turnpikes are removed therefrom, and the repair thereof is undertaken by the town, cease on that account to form part of a turnpike road within the same section.*

Therefore, where a turnpike road which on the 31*st of December*, 1870, *included such parts as above mentioned, between that date and the passing of the Highways and Locomotives (Amendment) Act ceased to be a turnpike road, the obligation of the county, under section* 13, *to contribute towards the maintenance of the road extended to such parts, though not previously maintained by the turnpike trustees.*

This was an appeal from a judgment of the Court of Appeal, which affirmed one of the Queen's Bench Division.

The facts were stated in a Special Case, which, so far as material, was as follows:—

Special Case.

1. This was a rule calling upon the Justices of the peace for the West Riding of the county of York to shew cause why a writ of mandamus should not be issued commanding them to pay to the mayor, aldermen and burgesses of the borough of Sheffield certain sums hereinafter mentioned in respect of the maintenance of three roads, hereinafter respectively called the Wakefield and Sheffield Road, the Sheffield and Chesterfield Road and the Sheffield and Glossop Road, such roads being alleged by the said mayor, aldermen and burgesses to be main roads within the meaning of the 13th section of the Highways and Locomotives (Amendment) Act, 1878.

2. The Justices of the peace of the West Riding of the county of York in General or Quarter Sessions assembled are the county authority within the meaning of the said Highways and Locomotives (Amendment) Act, 1878, for the said Riding in which the borough of Sheffield (hereinafter called "the borough") is situated.

3. The borough is, and has been since the year 1843, subject to the Municipal Corporation Act, 1835, and the Acts amending the same. The Local Government Act, 1858, was adopted, and came into operation in the borough, on the 7th of September, 1864, and the borough is now an urban sanitary district within the meaning of the Public Health Act, 1875; and the said mayor, aldermen and burgesses, acting by the council (hereinafter called "the corporation"), are the urban sanitary authority thereof. Previously to the 24th of September, 1880, the borough had no separate Court of Quarter Sessions, and was a highway area for the purposes of the said Highways and Locomotives (Amendment) Act, 1878.

4. By an Act [58 Geo. 3. c. liv.] which was passed in the fifty-eighth year of the reign of King George the Third, and remained in force until it was repealed by the Local Government Supplemental Act, 1865 (No. 3), and which was intituled "An Act for cleansing, lighting, watching and otherwise improving the town of Sheffield, in the county of York," certain limits were assigned to what is therein called "the town of Sheffield." They comprehend the area coloured yellow on the map hereunto annexed, marked "A."

[The area was comprised within a circle drawn with a radius of three quarters of a mile round the parish church.]

5. By statute 2 Will. 4. c. 64. s. 35, it was enacted that the several cities, boroughs and places specified in the schedule thereto annexed, marked "O," should,

as to the election of members or a member to serve in Parliament, respectively include the places and be comprised within the boundaries which in such schedule were respectively specified and described in conjunction with the names of such cities, boroughs, and places respectively. In the said schedule "O" Sheffield was declared to comprise "the parish of Sheffield." The said parish of Sheffield comprises the area coloured green on the said plan marked "A," and is also the area of the borough of Sheffield comprised within the grant of a charter of incorporation to the inhabitants thereof, pursuant to the provisions of the said Municipal Corporation Act, 1835.

6. In August, 1878, when the said Highways and Locomotives (Amendment) Act, 1878, was passed, the lines of buildings continuous, or nearly so, extended beyond the above-mentioned area coloured yellow, and up to the limits of the area on the map coloured pink. The remainder of the borough, consisting of agricultural and moor land, is edged green on the map.

7. It will now be convenient to state separately the facts relating to each of the three roads to which this case relates.

The Wakefield and Sheffield Road.

8. By a certain Turnpike Act [6 Will. 4. c. liii.], intituled "An Act for repairing and improving the road from Wakefield to Sheffield, in the county of York," passed in the sixth year of King William the Fourth (1836), for the purpose of more effectually diverting, altering, amending, widening, improving and keeping in repair a turnpike road leading from the south end of the town of Wakefield to the north end of the town of Sheffield (herein called the Wakefield and Sheffield Road), it was enacted (section 40) that such Act should commence and take effect from the passing thereof, and should continue and be in force for and during the term of thirty-one years, and from thence to the end of the then next session of Parliament. The term of the said Act was extended by various Acts of Parliament to the 1st of November, 1876, when it expired. The portion material in this case of the Wakefield and Sheffield Road is shewn on the said map, and is thereon coloured brown.

[This portion of the road extended from a point "G," on the boundary of the borough, to a point "H" within the area of the town.]

9. By section 34 of the said Act it was provided that no part of the money arising or to be received by virtue of that Act should be laid out in repairing, maintaining or improving any street, highway or place in any part of the towns of Barnsley, Sheffield and Wakefield, or any of them, nor should any toll be collected there, anything in that Act contained to the contrary notwithstanding.

10. The portion of the Wakefield and Sheffield road from the point marked "H" to the point marked "A" on the said map was made through private lands in pursuance of the said Act of the sixth year of King William the Fourth, and there was no continuous row of houses in the year 1836 on any portion of the line of that road within the borough.

11. A turnpike-gate or toll-bar was erected on the Wakefield and Sheffield Road at Pitsmoor at the point marked "A" [on the boundary of the area coloured pink] on the said map within the borough by the trustees of such road, and tolls were taken thereat; and the portion of the road within the borough (namely, from the point marked "G" on the said map to the point marked "H" at the Wicker Viaduct) was maintained by such trustees until the said Turnpike Act of the sixth year of King William the Fourth expired as aforesaid, on the 1st of November, 1876. Since that date the said portion of the road has been maintained by the corporation, and no tolls have been taken thereon.

12. The expenses now claimed from the said Justices for the county in respect of this road relate to the portion thereof between "G" and "H."

The Sheffield and Chesterfield Road.

13. By a certain other Turnpike Act—namely, "The Derby, Duffield, Wirksworth and Sheffield Turnpike Road Act, 1851" [14 Vict. c. xxxvii.]—passed for the purpose of more effectually amending, improving and keeping in repair a turnpike road leading from near the north end of the town of Derby through the towns of Duffield and Chesterfield to the town of Sheffield (herein called the Sheffield and

Chesterfield Road), and a branch road from the town of Duffield to the town of Wirksworth, it was enacted (section 19) that such Act should commence and take effect on the 31st of October, 1851, and should continue in force for the term of twenty-one years, and from thence to the end of the session of Parliament which should then next follow. The term of the said Act was extended by the Annual Turnpike Continuance Act, 1870, to the 1st of November, 1875, when it expired. The portion material in this case of the Sheffield and Chesterfield Road is shewn on the said map, and is thereon coloured blue.

[This portion extended from a point "B" on the boundary of the borough and of the pink area to a point "I" on the boundary of the town.]

14. By section 11 of the said Act it was provided that no toll-gate should at any time thereafter be set up or erected upon the said roads nearer to the said town of Sheffield than the brook or rivulet which divides the counties of Derby and York (being the point marked "B" on the said plan), except only the side gate at Healey.

15. By section 18 of the said Act it was provided that no money should be laid out on the said roads within the towns of Derby, Chesterfield or Sheffield, or within the limits of any Act of Parliament passed for the improvement of any town, nor should any tolls be collected therein.

16. At the date of the passing of the Derby, Duffield, Wirksworth and Sheffield Turnpike Road Act, 1851, there was no continuous row of houses on the Sheffield and Chesterfield Road from the point marked "K" to the point marked "B" on the said map.

["K" was a point on the road between "B" and "I."]

17. A turnpike-gate or toll-bar was erected on the Sheffield and Chesterfield road at Meersbrook (at the point marked "B" on the said map), on the boundary of the borough, and on the line of division between the counties of Derby and York, by the trustees of such road, and another side gate or toll-bar in the hamlet of Healey, in the said borough (at the point marked "C" [between "B" and "K"] on the said map), erected previously to the passing of the said Derby, Duffield, Wirksworth and Sheffield Turnpike Road Act, 1851, and being the side gate referred to in section 11 aforesaid, was continued by the said trustees, and tolls were (subject to certain restrictions contained in the 10th section of that Act) taken at the said gates or bars by such trustees until the said last-mentioned Act expired as aforesaid, on the 1st of November, 1875. Before the said adoption of the Local Government Act, 1858, the said trustees, by arrangement with the surveyors of highways for the township of Ecclesall Bierlow, in the borough of Sheffield, paid to them annually the sum of 125*l.*, and in consideration of such payment the said surveyors repaired the Sheffield and Chesterfield Road within that township—namely, from the point marked "I" at Sheffield Moor to the bridge over the river Sheaf at Healey marked "J" [between "C" and "K"] on the said map. And after the said adoption by the corporation of the Local Government Act, 1858, until the expiration of the Derby, Duffield, Wirksworth and Sheffield Turnpike Road Act, 1851, the said sum was paid annually by the said trustees to the corporation, and the said portion of road was repaired by the corporation, but no formal contract for carrying out the said arrangement was made by the said trustees either with the said surveyors or with the corporation.

18. The remainder of the Sheffield and Chesterfield Road within the borough—namely, from the point marked "J" to the point marked "B" on the plan—was maintained by the trustees of such road until their Act expired as aforesaid, and since that time the whole of the road within the borough has been maintained by the corporation, and no tolls have been taken thereon.

19. The expenses now claimed from the said Justices for the county in respect of this road relate to the portion thereof between "B" and "I."

The Sheffield and Glossop Road.

20. By a certain other Turnpike Act—namely, "The Sheffield and Glossop Turnpike Road Act, 1851" [14 & 15 Vict. c. cxxxiii.], intituled "An Act for repairing the road from Sheffield, in the county of York, to the Marple Bridge Road, in the parish of Glossop, in the county of Derby"

(herein called the Sheffield and Glossop Road), "and the branch to Mortimer's Road, in the parish of Hathersage, in the said county of Derby"—it was enacted (section 27) that such Act should commence on the 1st of November, 1851, and should continue in force for the term of twenty-one years, and from thence to the end of the session of Parliament which should then next follow. The term of the said Act was extended by the said Annual Turnpike Continuances Act, 1870, to the 1st of November, 1875, when it expired. The portion material in this case of the Sheffield and Glossop Road is shewn on the said map, and is thereon coloured red. [This portion extends from a point "F" on the boundary of the borough to a point within the town. "D" is the point where it passes the boundary of the pink area.]

By section 24 of the last-mentioned Act it was enacted that such parts of the said Sheffield and Glossop Road lying between the commencement of the road at Sheffield and a point ten yards east of the Fulwood Bar (being the bar at the point "D" on the said plan), as were then wholly repaired and maintained by the surveyors of highways in like manner as the other roads of the town of Sheffield were repaired and maintained, should no longer be deemed to be parts of the Sheffield and Glossop Road, and no money should be laid out by the trustees of the Sheffield and Glossop Road upon such parts of the said road, and that, in case the surveyors of the highways of the townships, or any or either of the townships lying between the parts aforesaid and into which the said roads passed, should give notice in writing to the clerk or surveyor of the trustees of the Sheffield and Glossop Road that they intended to undertake the repair and maintenance of so much of the said road as lay within their respective townships; then, from and after the giving of such notice, the said surveyors of highways should undertake the repair and maintenance of the portion of the Sheffield and Glossop Road in respect of which such notice or notices should have been given; and the trustees of the Sheffield and Glossop Road should not lay out or expend any money thereon, and, after the expiration of twelve calendar months from the giving of such notice, no toll should be demanded, nor any toll-bar or gate erected, on the portions of the Sheffield and Glossop Road in respect of which such notice or notices should have been given, and such portion of the Sheffield and Glossop Road should be no longer deemed to be portion of the said Sheffield and Glossop Road.

21. The part of the said Sheffield and Glossop Road lying between the commencement of the road at Sheffield and the point marked "D" on the said plan was first repaired by the surveyors of highways of the respective townships of Sheffield and Netherhallam in or about the year 1851.

22. The turnpike gates or bars erected on the Sheffield and Glossop Road (namely, at the points marked respectively "D," "E" [between "D" and "F"] and "F" on the said map) within the borough by the trustees of such road were maintained by the said trustees and tolls taken thereat down to the 1st of July, 1870, when, in consequence of an arrangement between the trustees and the corporation, they were removed, and since that date no tolls have been taken on that road within the borough since July, 1870, down to the expiration of the Sheffield and Glossop Act of the 1st of November, 1875, and since then down to the present time the repairs of that portion of the said road which is within the said borough have been done by the corporation.

23. [This paragraph set out extracts from the minutes of the corporation shewing the nature of the said arrangement.]

24. The Acts of Parliament of 58 Geo. 3., c. liv., 6 Will. 4. c. liii., 14 Vict. c. xxxvii., and the 14 & 15 Vict. c. cxxxiii., referred to respectively in the 4th, 8th, 13th and 20th paragraphs hereof, shall form part of this Special Case.

25. The expenses now claimed from the said Justices for the county in respect of this road relate to the portion thereof between "D" and "F."

26. From and after the 29th of September, 1878, the corporation incurred (A) expenses amounting to 212*l.* 0*s.* 8*d.* in the half-year ended on the 25th of March, 1879, and expenses amounting to 1,599*l.* 14*s.* 10*d.* in the year ended on the 25th of March, 1880, in the maintenance of the said

portion of the Wakefield and Sheffield Road within the borough—namely, on the part between the letters "G" and "H"; (B) expenses amounting to 60*l.* 2*s.* 2*d.* in the half-year ended on the 25th of March, 1879, and expenses amounting to 122*l.* 9*s.* 6*d.* in the year ended on the 25th of March, 1880, in the maintenance of the said portion of the Sheffield and Chesterfield Road within the borough —namely, on the part between the letters "B" and "I"; and (C) expenses amounting to 193*l.* 13*s.* 2*d.* in the half-year ended on the 25th of March, 1879, and expeness amounting to 304*l.* 4*s.* 8*d.* in the half-year ended on the 25th of March, 1880, in the maintenance of a part of the said portion of the Sheffield and Glossop Road within the borough —namely, on the part between the letters "F" and "D."

27. In the month of December, 1878, the Justices of the peace, as the county authority for the said Riding, prescribed forms for keeping the accounts of the expenses of the maintenance of the main roads within their jurisdiction.

. . . . .

37. The question of law arising in this proceeding is, whether the said three roads, formerly turnpike roads—to wit, the Wakefield and Sheffield Road, the Sheffield and Chesterfield Road and the Sheffield and Glossop Road—or any of them, or any part or parts thereof within the borough, ceased to be turnpike roads or a turnpike road within the meaning of the 13th section of the Highways and Locomotives (Amendment) Act, 1878, after the 31st of December, 1870, by the operation of the Local Turnpike Acts.

38. If the Court shall be of opinion that the said three roads or any of them, or any part or parts thereof, so ceased to be turnpike roads or a turnpike road since the 31st of December, 1870, a peremptory writ of mandamus is to be issued commanding the said county authority to pay to the corporation forthwith one-half of the said expenses so incurred as aforesaid in the maintenance of such parts of the said roads as so ceased to be turnpike roads within the time aforesaid, from the 29th of September, 1878, to the 25th of March, 1880.

39. If the Court shall be of opinion that no part of the said three roads ceased to be a turnpike road after the 31st of December, 1870, the rule granted herein on the 24th of November, 1880, is to be discharged.

It was agreed between the appellants and respondents at the hearing in the Queen's Bench Division, and in the Court of Appeal, that it should be taken as part of the Special Case that on the 30th of December, 1870, the lines of buildings contiguous or nearly so extended to the limits of the pink area (par. 6).

The Queen's Bench Division (Lord Coleridge, C.J., and Manisty, J.) granted a mandamus against the Justices in respect of all three roads, Manisty, J., thinking they were not liable in respect to the Sheffield and Chesterfield Road, but withdrawing his judgment as to that in order that there might be an appeal.

The Court of Appeal (Brett, L.J., Cotton, L.J., and Lindley, L.J.) affirmed the judgment of the Court below as to all three roads.

The Solicitor-General (*Sir F. Herschell*) and *Forbes, Q.C.* (*Darwin* with them), for the appellants.—The House has decided in *The Justices of Lancashire* v. *The Mayor of Rochdale* (1) that for the purposes of 41 & 42 Vict. c. 77. s. 13, a turnpike road is to be treated as a whole. The section is not to be applied piecemeal; and no part of a turnpike road in existence on the 31st of December, 1870, can, by being exempted from the turnpike trust, become a "main road," so long as the trust still subsists as to the remainder of the road. Here, however, the pieces of road had been disturnpiked before the 31st of December, 1870; they therefore never came within the section at all, for they were no part of turnpike roads in existence at that date.

A "turnpike road" is "a road on which a turnpike is lawfully erected and the public are bound to pay tolls"—*per* Parke, B., in *The Northam Bridge and Roads Company* v. *The London and Southampton Railway Company* (2). If, then, no turnpike could be erected or tolls charged on these pieces of road they were not turnpike roads. This was assumed to be so in the Courts below, and in *The Rochdale Case*

(1) *Ante*, p. 5; Law Rep. 8 App. Cas. 494.
(2) 6 Mec. & W. 428; 9 Law J. Rep. Exch. 165.

(1) by all the Courts, though it is disputed by the respondents.

The question whether the right to erect turnpikes and take tolls had ceased before the end of 1870 depends, in the cases of the Wakefield Road and the Chesterfield Road, on the meaning of the word "town" in the road Acts 6 Will. 4. c. liii. s. 34, and 14 Vict. c. xxxvii. ss. 11 and 18, respectively. Does the "town" of Sheffield there mean the town as existing when the Acts were passed (according to the construction adopted by the Court of Appeal), or the town (that is, continuous houses) as existing from time to time? The latter view ought to be adopted by the House, and the result would be that the pieces of the Wakefield Road and of the Chesterfield Road ceased to be turnpike roads before 1870. This view is in accordance with the general scheme of the turnpike Acts. Streets in towns were not intended to be subject to turnpike trusts—*The Queen* v. *Cottle* (3), *Collier* v. *Worth* (4), *Elliott* v. *The South Devon Railway Company* (5), *Milton* v. *The Faversham District Highway Board* (6) and *The Justices of Lancashire* v. *The Mayor of Rochdale* (1). The Glossop Road was disturnpiked by the agreement of the 1st of July, 1870.

It could not have been intended that where the corporation has, as here, under the Public Health Act, 1848 (11 & 12 Vict. c. 63), s. 68, the power to manage the roads and to alter them at its pleasure, still less where (as in the case of the Glossop Road) it has voluntarily assumed the burden of repairing, it should be able to throw half the expense on the county.

[LORD BLACKBURN referred to 41 & 42 Vict. c. 77. s. 16.]

Wills, *Q.C.*, and *Alexander Glen*, for the respondents.—*The Rochdale Case* (1) decided that 41 & 42 Vict. c. 77. s. 13, applies to a road as a whole. It cannot be applied to mere fragments of roads such as these.

The definition of "turnpike road" in *The Northam Bridge and Roads Company* v. *The London and Southampton Railway Company* (2) is not exclusive. It decides that a road not within the General Turnpike Acts may be a turnpike road if there is a right to take tolls, not that a road within those Acts is not a turnpike road if there is no power to take tolls. Those Acts regulate many other matters besides the erection of turnpikes and exaction of tolls—*The Queen* v. *Thomas* (7), *The Queen* v. *French* (8) and *Loveridge* v. *Hodsoll* (9).

The clause in the Wakefield Road Act (section 34) which prohibited turnpikes within the town was not intended to apply to the Wakefield Road at all, but was inserted *ex majore cautela* to prevent the erection of turnpikes elsewhere than on that road. The word "town" in the Chesterfield Road Act, ss. 11 and 18, means the town as limited by the Improvement Acts there referred to—*Clayton* v. *Fenwick* (10).

The Glossop Road trustees are not relieved from liability by their agreement with the corporation, in case the corporation fails to repair. The road therefore did not cease to be a turnpike road upon the conclusion of that agreement.

Forbes, in reply.

Cur. adv. vult.

LORD BLACKBURN.—This is an appeal against an order of the Court of Appeal affirming with costs an order of the Queen's Bench Division directing a peremptory mandamus to issue to the appellants to pay to the mayor, &c., of Sheffield, acting as the urban sanitary authority for that borough, half the moneys expended by them for the maintenance of that portion of the Wakefield and Sheffield Road on the part between the letters "G" and "H" on a map; half the expenses incurred by them on the maintenance of that portion of the Sheffield and Chesterfield Road on the part between the letters marked "B" and "I" on the said map; and half of the expenses incurred by them on the maintenance of

(3) 16 Q.B. Rep. 412; 20 Law J. Rep. M.C. 162.
(4) Law Rep. 1 Ex. D. 464.
(5) 2 Exch. Rep. 725; 5 Rail. Cas. 500; 17 Law J. Rep. Exch. 262.
(6) 10 B. & S. 548*n*.
(7) 7 E. & B. 399.
(8) 48 Law J. Rep. M.C. 175; Law Rep. 4 Q.B. D. 507.
(9) 2 B. & Ad. 602; 9 Law J. Rep. Q.B. 285.
(10) 6 E. & B. 114; 25 Law J. Rep. Q.B. 226.

the part of the Sheffield and Glossop Road between the letters "F" and "D" on the said map. This order of the Queen's Bench Division was made on a Special Case.

Much depends on the construction of the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), or rather of that part of it relating to main roads. By section 13 it is enacted that "for the purposes of this Act, and subject to its provisions, any road which has, within the period between the 31st of December, 1870, and the passing of this Act (the 16th of August, 1878), ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road. And half the expenses of the maintenance of such main road incurred by the highway authority shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situated." Section 14: "The following areas shall be deemed to be highway areas, amongst others—(1) urban sanitary districts." By section 38, highway authority means, as respects an urban sanitary district, the urban sanitary authority; and urban sanitary district and urban sanitary authority mean respectively the districts and authorities declared so to be by the Public Health Act, 1875, with an exception as to boroughs having a separate Court of Quarter Sessions, within which exception Sheffield did not at the time in question fall.

The appellants are the county authority, and the borough of Sheffield is a highway district, and the respondents are the highway authority for that district. The three turnpike Acts in question all expired by efflux of time after the Highways and Locomotives (Amendment) Act, 1878, came into force, and before the expenses were incurred, and the parts of the roads mentioned were all within the highway district of Sheffield. The only question therefore is, whether the parts of the roads in question respectively ever were, or rather whether after the 31st of December, 1870, they still were, parts of the turnpike road, within the meaning of the word as used in the Highways and Locomotives Act, 1878.

There is a distinction between turnpike roads and parish highways, though turnpike roads are, generally at least, highways, which, if the road is not kept in repair out of the tolls, the parish is bound to repair; and there are many enactments in which the Legislature has proceeded on the assumption that the traffic on a turnpike road is likely to be more important than that on a parish highway. A good example of this was given during the argument. A windmill is not to be erected within two hundred yards of a turnpike road, nor within fifty yards of a highway.

The Northam Bridge and Roads Company v. *The London and Southampton Railway Company* (2) also illustrates this. The special Act of the railway company required them, when crossing any "turnpike road," to do so by a bridge. The plaintiffs, a trading company, the proprietors of a bridge, owned a bridge and two roads, on which they were authorised to keep up turnpikes and levy tolls, but subject thereto they were public roads. The railway company proposed to cross these roads by a level crossing, which they had power to do if it was a public highway, not being a turnpike road.

The Vice-Chancellor refused an injunction, thinking that there could not be a turnpike road within the meaning of the Railway Act unless there was a turnpike trust such as to make it a turnpike road within the General Turnpike Act; but gave liberty to take the opinion of a Court of law on the subject. The Court of Exchequer were of a different opinion. Mr. Baron Parke, after reading the sections of the Railway Act, says, "In these enactments the Legislature had in view the benefit of the public, and therefore compelled the railroad company in the case of a turnpike road, *where the traffic is greatest*, to afford the public more accommodation by carrying the railroad either above or under the road. The question then is, whether this road traversed by the railway is a turnpike road. I think it is. The ordinary meaning of the words 'turnpike road' is a road on which a turnpike is lawfully erected and the public are bound to pay tolls. If a turnpike road meant a road subject to the general Turnpike Act, I should think, with the Vice-Chancellor,

that this is not a turnpike road, because it is not so governed." This case was cited for the sake of the definition of "turnpike road" there given. But I think it even more important as an authority for saying that the Legislature acted on the assumption that the traffic on turnpike roads is likely to be greater than on ordinary highways. It could not be supposed that it would always be so; but they legislated on that probability.

I think that in the Highways and Locomotives Amendment Act, 1878, the Legislature acted on a similar assumption. Their object was to cast half the burden of repairing main roads—that is, roads more for the purpose of through traffic than of local traffic—on the county, so far relieving the locality. And assuming that a road from one terminus to another which was a turnpike road was likely to be a main road in that sense, they made that a *prima facie* test of what should be a main road. In some cases this might be a fallacious test, and then it may be set right under the 16th section. But it was the general test; and, as I think, that must be borne in mind when enquiring what parts of a road regulated by a Turnpike Act are to be considered as turnpike road within the meaning of this enactment.

I will first consider the case of the Wakefield and Sheffield Road. The Turnpike Act in this case is the 6 Geo. 4. c. 53, for repairing and improving the road from Wakefield to Sheffield. It recites certain proposed deviations and alterations in the then existing turnpike road from the south end of Wakefield to the north end of Sheffield. Then by section 2 it enacts that the diversions and new lines of road shall, when declared complete, "be and form part of the said turnpike road leading from Sheffield to Wakefield"; and by the 6th section, that certain portions of the present turnpike road shall, as soon as the said new lines and diversions are declared to be completed, "respectively cease to form or be considered part or parcel of the said turnpike road."

And then comes the 34th section, on which the argument of the appellants is founded: "Provided always and be it enacted that no part of the money arising or to be received by virtue of this Act shall be laid out in repairing, maintaining or improving any street, highway or place in any part of the towns of Barnsley, Sheffield and Wakefield, or any of them, nor shall any toll be collected there, anything herein contained to the contrary notwithstanding." "H" is the point at the north end of Sheffield to which the turnpike road from Wakefield proceeds; "G" is the point at which that road crosses the boundary of the parish of Sheffield with which the borough is now made conterminous. There is a point marked "A" between "H" and "G" where the road leaves the town in the sense of the contiguous houses of Sheffield. That boundary was, on the 31st of December, 1870, considerably further from "H" than it was in 1836.

It was argued that the part of the road from "H" to "A" was in 1870 in the town of Sheffield, and that consequently the turnpike trustees were forbidden to spend money on that part of the road or to levy toll there. I am not able to understand what could be the reason why the Legislature should forbid the spending of any money on the portion of the turnpike road which should come to be within the towns named. I can quite easily understand why it should forbid levying toll on any part of the road which should come to be in a town. But I will assume (what I do not decide) that the Legislature have, for whatever reason, said that the trustees shall neither spend money nor levy toll on any portion of the turnpike road from Wakefield to Sheffield which should at any future time be within the ambit of the contiguous houses forming the towns of Sheffield, Barnsley and Wakefield—Would that prevent those portions from being part of the turnpike road from Wakefield to Sheffield within the meaning of the Highways and Locomotives Amendment Act, 1878, s. 13?

If the words used had been like those of section 6, that those portions should cease to form or be part of the turnpike road, I should have thought so. The portion of the road which had been, by plain and express terms, made part of the turnpike road would, by equally plain and express words, be made to be no longer part of it. But when we are construing an

Act of Parliament on which the Legislature have said that, when a turnpike road is made from one terminus to another, they will assume that it is a main road—that is, a road for carrying through traffic from, in this case, Sheffield to Wakefield—I cannot think that a portion of that road is to be considered as no longer part of that turnpike road merely because no turnpike is to be erected on that part. The portion of the road through Taunton in *The Queen* v. *Cottle* (3) certainly did not cease to be part of the turnpike road when the toll-bar was removed beyond the outskirts of the town. There the trustees continued to spend money on the portion of the road within the town; here they are forbidden (according to what I assume to be the construction) to do so; but that does not, in my mind, prevent that which was part of the turnpike road from continuing to be part of it, or afford any argument for saying that this fragment of the turnpike road is the less to be a part of the main road. It does afford an argument in favour of saying that it is no longer under the turnpike trust; but I agree with the Court of Exchequer and differ from the Vice-Chancellor in thinking that that is not the test.

This is not the reason, I think, of the Judges below, and that makes me distrust its soundness; but, after consideration, I think it is sound, and advise your Lordships to affirm this order so far as relates to this road.

Precisely the same reasons apply to the Derby and Sheffield Road and the effect of the 18th section of the 14 Vict. c. xxxvii.; and for the same reasons I think the judgment in that case also should be affirmed.

As to the Glossop Road, it depends on the effect of an agreement made between the road trustees and the town of Sheffield under the 21 & 22 Vict. c. 98. s. 41, by which the turnpikes were removed, and the repair of the road was undertaken by the town before the last day of December, 1870.

I can only express my agreement with what Lord Coleridge says in the Court below. There is nothing expressed, and I think nothing implied, in the Acts of Parliament to say that such an agreement shall make the portion of the turnpike road with regard to which such an agreement is made cease to be part of the road.

I therefore think that the judgment should be affirmed and the appeal dismissed, with costs.

LORD WATSON.—I concur with the noble and learned Lord who has just spoken, both as to the true construction of the 13th section of the Highways and Locomotives Amendment Act of 1878, and as to the application of its enactments to the three roads in question; but having had an opportunity of considering in print the judgment of the noble and learned Lord, and finding there all the reasons which have led me to form that opinion, I think it unnecessary to add anything to what he has said.

LORD FITZGERALD.—I concur in the decision that has been announced by the noble and learned Lord on the woolsack (Lord Blackburn) as to all the three cases brought before us on this appeal.

As to the first road—namely, the Wakefield and Sheffield Road—the question raised affects only the liability of the county as to the portion of that road between "A" and "H." The Sheffield Act of 1818 by its 18th section defines the limits and boundaries of Sheffield for the purposes of this Act, represented by the part shaded yellow on the map forming part of the case. Then came the Act of 1836, for repairing and improving the road from Wakefield to Sheffield. At the time of the passing of that Act the boundaries and limits of Sheffield remained unaltered, save as affected for Parliamentary purposes only by the Act 2 Will. 4. c. 64.

The portion of the Wakefield and Sheffield Road now the subject of controversy is a new bit of road constructed, under the Act of 1836, in substitution for another portion of the same road. Section 4 of the Act of 1836 provides that this new piece shall become and be and form part of the turnpike road leading from Wakefield and Sheffield, and shall be repaired and main-

tained by the trustees; and section 6 provides that the old part of the road, for which the new piece is so substituted, shall cease to be part of the said turnpike road. We have here, therefore, the clearest declaration that the new piece of road, now marked on the map as from "A" to "H," became part of the turnpike road, subject to its trusts, and to be repaired by the trustees, and it is stated as a matter of fact that it was kept in repair by the trustees down to the expiration of the trust in 1876, when the whole line of road from Wakefield ceased to be a turnpike road, in the sense that the Act which constituted it came to an end on the 1st of November, 1876. The whole of that road, including the piece as to which the controversy arises, came within the 13th section of the Act of 1878.

The appellants, however, rely on section 34 of the Act of 1836, the potent effect of which is such, they allege, as that the piece of road from "A" to "H" never was turnpike road maintainable by the trustees; or, if it was, it ceased to be such as soon as it became a street of the town of Sheffield by being built on at both sides. "The town of Sheffield" in the 34th section would seem to me to mean the town as defined and limited by the Act of 1818, and it did not then embrace the district from "A" to "H": and, if so, section 34 would at that time have no application to it; but if we give it a more elastic construction, and treat it as applying to what should be known from time to time popularly as the town of Sheffield—that is, Sheffield as it enlarged its limits by continuous building—in that sense Sheffield in 1870 did extend up to "A."

The 34th section, which has caused so much doubt, enacts as follows: "That no part of the money arising or to be received by virtue of this Act shall be laid out in repairing, maintaining or improving any street, highway or place in any part of the towns of Barnsley, Sheffield and Wakefield, or any of them, nor shall any toll be collected there: anything herein contained to the contrary notwithstanding;"—and the difficulty of putting any reasonable construction on it has been very great indeed. Whether your Lordships adopt the view of that section taken by the Queen's Bench Division and by the Court of Appeal, or adopt generally the reasons of the noble and learned Lord (Lord Blackburn), the construction is fatal to the argument of the appellants.

I am unable to adopt the view that the Legislature intended by section 34 to undo what had been done by sections 3 and 4, and to take out of the turnpike trust parts of the new roads and diversions which it had by these sections declared should become and form parts of the said turnpike road and be accordingly repaired and maintained by the trustees. Section 34 is a finance clause, and deals with the application of the money to be received for tolls; section 5 expressly empowers the trustees to erect toll-bars and gates on the new lines and extensions; and section 21 authorises the taking of the statutable tolls at these new toll-gates or toll-bars when erected. It also deserves attention that one of the new lines or diversions is to commence at the marketplace of Barnsley, which is a place in that town.

I should, in preference to the construction which the appellants contend for, read section 34 so as to restrain its operation to matters not within sections 3 and 4, and so as not to defeat their operation, or as a provision inserted *ex abundanti cautela*, lest the trustees, mistaking their duties, should expend the trust money on any highway or place in any of the towns named other than the road for which, from end to end, provision is made by the statute. The practice of the trustees has been for forty years in accordance with this construction. "*Abundans cautela non nocet*" is an old maxim of the law.

I am of opinion that this Sheffield and Wakefield Road, as to the part in question, comes decidedly within the provisions of section 13 of the Act of 1878, and that there is nothing to take it out of its operation, and that its consequences follow.

As to Nos. 2 and 3, the Derby and Sheffield Road, and the Glossop Road, I have no difficulty in adopting the judgment of Lord Coleridge in the Court below.

I have only to add that your Lordships decision in the present case does not militate against your Lordships' prior decision

in *The Justices of Lancashire* v. *The Mayor of Rochdale* (1).

Order appealed against affirmed; and appeal dismissed, with costs.

Solicitors—Badham & Williams, agents for W. L. Williams, Wakefield, for appellants; Richard Smith & Wilmer, agents for John Yeomans, Sheffield, for respondents.

1884. Feb. 15. } THE QUEEN *v.* PRICE.

Cremation — Dead Body — Misdemeanour — Nuisance — Inquest — Preventing Inquest being held.

To burn a dead body, instead of burying it, is not a misdemeanour, unless it is so done as to amount to a public nuisance.

If an inquest ought to be held upon a dead body, it is a misdemeanour so to dispose of the body as to prevent the coroner from holding the inquest.

At the assizes held at Cardiff before Stephen, J., in February, 1884, William Price was indicted for attempting to burn the body of his child, instead of burying it; and a second indictment charged him with attempting to burn the body with intent to prevent the holding of an inquest upon it.

G. B. Hughes, and *B. T. Williams*, appeared for the prosecution.

The prisoner was undefended.

After hearing counsel for the prosecution, the learned Judge left the case to the jury, directing them in the terms of his charge to the grand jury, which, on account of the importance and novelty of the subject to which it relates, is here given. The jury acquitted the prisoner on both charges.

STEPHEN, J.—One of the cases to be brought before you is so singular in its character, and involves a legal question of so much novelty and of such general interest, that I propose to state at some length what I believe to be the law upon the matter. I have given it all the consideration I could, and I am permitted to say that, although I alone am responsible for what I am about to say to you, Lord Justice Fry takes the same view of the subject as I do, and for the same reasons.

William Price is charged with a misdemeanour under the following circumstances:—He had in his house a child five months old, of which he is said to have been the father. The child died, and Price, as it seems, did not register its death. The coroner accordingly gave him notice on Saturday, the 12th of January, 1884, that unless he sent a medical certificate of the cause of the child's death he (the coroner) would hold an inquest on the body on the following Monday. Price on the Monday afternoon took the body of the child to a field of his own, some distance from the town of Llantrissant, put it into a ten-gallon cask of petroleum and set the petroleum on fire. A crowd collected, the body of the child which was burning was covered with earth, and the flames were extinguished, and Price was brought before the magistrates and committed for trial. He will be indicted before you on a charge which in different forms imputes to him as criminal two parts of what he is said to have done. Namely, first, his having prevented the holding of an inquest on the body; and, secondly, his having attempted to burn the child's body.

With respect to the prevention of the inquest the law is, that it is a misdemeanour to prevent the holding of an inquest which ought to be held by disposing of the body. It is essential to this offence that the inquest which it is proposed to hold is one which ought to be held. The coroner has not an absolute right to hold inquests in every case in which he chooses to do so. It would be intolerable if he had power to intrude without adequate cause upon the privacy of a family in distress and to interfere with their arrangements for a funeral. Nothing can justify such interference except a reasonable suspicion that there may have been something peculiar in the death, that it may have been due to other causes than common illness. In such cases the

coroner not only may, but ought to hold an inquest; and to prevent him from doing so by disposing of the body in any way—for an inquest must be held on the view of the body—is a misdemeanour. The depositions in the present case do not very clearly shew why the coroner considered an inquest necessary. If you think that the conduct of Price was such as to give the coroner fair grounds for holding one, you ought to find a true bill, for beyond all question Price did as much as in him lay to dispose of the body in such a manner as to make an inquest impossible.

The other fact charged as criminal is the attempt made by Price to burn the child's body; and this raises, in a form which makes it my duty to direct you upon it, a question which has been several times discussed, and has attracted some public attention, though, so far as I know, no legal decision upon it has ever been given—the question, namely, whether it is a misdemeanour at common law to burn a dead body instead of burying it.

As there is no direct authority upon this question I have found it necessary to examine several branches of the law which bear upon it more or less remotely. The practice of burning dead bodies prevailed to a considerable extent under the Romans, as it does to this day amongst the Hindoos, though it is said that the practice of burial is both older and more general. Burning appears to have been discontinued in this country and in other parts of Europe when Christianity was fully established, as the destruction of the body by fire was considered, for reasons to which I need not refer here, to be opposed to Christian sentiment; but this change took place so long ago, and the substitution of burial for burning was so complete, that the burning of the dead has never been formally forbidden or even mentioned or referred to, so far as I know, in any part of our law. The subject of burial was formerly, and for many centuries exclusively, a branch of the ecclesiastical or canon law. Amongst the English writers on this subject little is to be found relating to burial. The subject was much more elaborately and systematically studied in Roman Catholic countries than in England, because the law itself prevailed much more extensively. In the *Jus Ecclesiasticum* of Van Espen, II. 142–168, Part II. sect. iv. tit. vii., there is an elaborate discourse, filling twenty-two folio pages in double columns, on the subject of burial, in which every branch of the subject is systematically arranged and discussed, with references to numerous authorities. The importance of it is that it shews the view taken by the Canonists, and this view had great influence on our own ecclesiastical lawyers, though only a small part of the canon law itself was ever introduced into this country.

Van Espen throughout regards the participation in funeral rites as a privilege to which, subject to certain conditions, all the members of the Church were entitled, and the deprivation of which was a kind of posthumous punishment analogous to the excommunication of the living. The great question with which he occupies himself is, In what cases ought burial to be denied? The general principle is, that those who are not worthy of Church privileges in life are also to be excluded from them after death. ("Sicuti enim nonnullos vivos a suâ communione, præsertim in sacris, jam pridem excludendos censuit, ita quoque eosdem suâ communione post mortem indignos credidit.") As for the manner in which the dead bodies of persons deprived of Christian burial were to be disposed of, Van Espen says only that though in some instances the civil power may have entirely forbidden burial, whereby bodies may remain unburied and exposed to the sight of all to be devoured by beasts or destroyed by the weather (he considers the dissection of criminals as a case of this sort), the Church has never made such a provision, and has never prohibited the covering of such corpses with the earth.

This way of looking at the subject seems to explain how the law came to be silent on exceptional ways of disposing of dead bodies. The question was, In what cases burial must be refused? As for the way of disposing of bodies to which it was refused, the matter escaped attention, being probably regarded as a matter which interested those only who were so unfortunate as to have charge of such bodies.

The famous judgment of Lord Stowell in the case of iron coffins (*Gilbert* v. *Buz-*

zard (1)), which constitutes an elaborate treatise on burial, proceeds upon the same principles. The law presumes that every one will wish that the bodies of those in whom he was interested in their lifetime should have Christian burial. The possibility of a man's entertaining and acting upon a different view is not considered.

These considerations explain the reason why the law is silent as to the practice of burning the dead. Before I come to consider its legality directly, it will be well to notice some analogous topics which throw light upon it. There is one practice which has an analogy to funereal burning, inasmuch as it constitutes an exceptional method of dealing with dead bodies. I refer to anatomy. Anatomy was practised in England at least as far back as the very beginning of the seventeenth century. It continued to be practised without, so far as I know, any interference on the part of the Legislature down to the year 1832, in which was passed the Act for regulating schools of anatomy—2 & 3 Will. 4. c. 75. This Act recites the importance of anatomy, and that "the legal supply of human bodies for such anatomical examination is insufficient fully to provide the means of such knowledge." It then makes provision for the supply of such bodies by enabling "any executor or other party having lawful possession of the body of any deceased person," to permit the body to be dissected, except in certain cases. The effect of this has been that the bodies of persons dying in various public institutions whose relations are unknown are so dissected. The Act establishes other regulations not material to the present question, and enacts that after examination the bodies shall be "decently interred." This Act appears to me to prove clearly that Parliament regarded anatomy as a legal practice, and, further, that it considered that there was such a thing as "a legal supply of human bodies," though that supply was insufficient for the purpose. This is inconsistent with the opinion that it is an absolute duty on the part of persons in charge of dead bodies to bury them, and this conclusion is rather strengthened than otherwise by the provision in section 13, that the "party removing" the body shall provide for its decent burial after examination. This seems to imply that apart from the Act the obligation to bury would not exist, and it is remarkable that the words are not, as in the earlier section, "executor or other party," but "party removing," referring no doubt to the master of the workhouse, or other person in a similar position, who hands the body over to the surgeons. Upon him the statute imposes the duty of decently interring the bodies with which he is allowed to deal. The executor's rights at common law, whatever they may be, are not altered.

I come now to a series of cases more closely connected with the present case. As is well known, the great demand for bodies for anatomical purposes not only led in some cases to murders, the object of which was to sell the body of the murdered person, but also to robberies of churchyards by what were commonly called resurrection men. This practice prevailed for a considerable length of time, as appears from the case of *The King* v. *Lynn* (2), decided in 1788—forty-four years before the Anatomy Act. In that case it was held to be a misdemeanour to disinter a body for the purpose of dissection, the Court saying that common decency required that the practice should be put a stop to, that the offence was cognisable in a criminal Court as being "highly indecent and *contra bonos mores*, at the bare idea alone of which nature revolted." They also said that "it had been the regular practice of the Old Bailey in modern times to try charges of this nature." It is to be observed in reference to this case that the act done would have been a peculiarly indecent theft if it had not been for the technical reason that a dead body is not the subject of property. The case, however, has been carried a step farther in modern times. It was held in *The Queen* v. *Sharpe* (3) to be a misdemeanour to disinter a body at all without lawful authority, even when the motives of the offender were pious and laudable, the case being one in which a son disinterred his mother in order to bury her in his father's grave, but he got access to the

(1) Hag. Con. Rep. 333.

(2) 2 Term Rep. 738.

(3) D. & B. 160.

grave and permission to open it by a false pretence.

The law to be collected from these authorities seems to me to be this:—The practice of anatomy is lawful and useful, though it may involve an unusual means of disposing of dead bodies, and though it certainly shocks the feelings of many persons; but to open a grave and disinter a dead body without authority is a misdemeanour, even if it is done for a laudable purpose.

These cases, for the reasons I have given, have some analogy to the case of burning a dead body, but they are remote from it. They certainly do not warrant the proposition that to burn a dead body is in itself a misdemeanour.

Two other cases come rather nearer to the point. They are *The Queen* v. *Vann* (4) and *The Queen* v. *Stewart* (5). Each of these cases lays down in unqualified terms that it is the duty of certain specified persons to bury in particular cases. The case of *The Queen* v. *Stewart* (5) lays down the following principles: "Every person dying in this country, and not within certain exclusions laid down by the ecclesiastical law, has a right to Christian burial; and that implies the right to be carried from the place where his body lies to the parish cemetery." It adds, "The individual under whose roof a poor person dies is bound" (*i.e.* if no one else is bound —as appears from the rest of the case) "to carry the body decently covered to the place of burial. He cannot keep him unburied, nor do anything which prevents Christian burial. He cannot, therefore, cast him out so as to expose the body to violation, or to offend the feelings or endanger the health of the living; for the same reason he cannot carry him uncovered to the grave." In the case of *The Queen* v. *Vann* (4) the Court held: "That a man is bound to give Christian burial to his deceased child if he has the means of doing so; but he is not liable to be indicted for a nuisance if he has not the means of providing burial for it."

These cases are the nearest approach which I have been able to find to an authority directly upon the present point. It may be said that if there is an absolute duty upon a man having the means to bury his child, and if it is a duty to give every corpse Christian burial, the duty must be violated by burning it. I do not think, however, that the cases really mean to lay down any such rule. The question of burning was not before the Court in either case. In *The Queen* v. *Stewart* (5) the question was whether the duty of burial lay upon the parish officers or on some other person. In *The Queen* v. *Vann* (4) the question was whether a man who had not the means to bury his child was bound to incur a debt in order to do so. In neither case can the Court have intended to express themselves with complete verbal accuracy, for in the case of *The Queen* v. *Stewart* (5) the Court speaks of the "rights" of a dead body, which is obviously a popular form of expression—a corpse not being capable of rights; and in both cases the expression "Christian burial" is used, which is obviously inapplicable to persons who are not Christians — Jews, for instance, Mahommedans or Hindoos. To this I may add that the attention of neither Court was called to the subject of anatomy already referred to. Skeletons and anatomical preparations could not be innocently obtained if the language of the cases referred to were construed as if it were intended to be severely and literally accurate.

There is only one other case to be mentioned. It is the case of *Williams* v. *Williams* (6), which was decided just two years ago by Mr. Justice Kay, in the Chancery Division of the High Court of Justice. In this case one H. Crookenden directed his friend Eliza Williams to burn his body, and directed his executors to pay her expenses. The executors buried the body. Miss Williams got leave from the Secretary of State to disinter it, in order, as she said, to be buried elsewhere. Having obtained possession of it by this misrepresentation, she burnt it, and sued the executors for her expenses. The case leaves the question now before me undecided. "The purpose," says Mr. Justice Kay, "confessedly was to have the body burnt, and thereupon arises a very considerable ques-

(4) 2 Den. C.C. 325.
(5) 12 Ad. & E. 773, 779.
(6) 51 Law J. Rep. Chanc. 385; Law Rep. 20 Ch. D. 659.

tion whether that is or is not a lawful purpose according to the law of this country. That is a question I am not going to decide." He held that in that particular case the removal of the body and its burning were both illegal according to the decision of *The Queen* v. *Sharpe* (3) already referred to. "Giving the lady credit," he said, "for the best of motives, there can be no kind of doubt that the act of removing the body by that licence and then burning it, was as distinct a fraud on that licence as anything could possibly be." This was enough for the purposes of the particular case, and the learned Judge accordingly expressed no opinion on the question on which it now becomes my duty to direct you.

The question arises in the present case in a perfectly clear and simple form, unembarrassed by any such consideration as applied to the other cases to which I have referred. There is no question here of the illegality and dishonesty which marked the conduct of those who were described as resurrection men, nor of the artifices, not indeed criminal but certainly disingenuous, by which possession of the body was obtained in the cases of *The Queen* v. *Sharpe* (3) and *Williams* v. *Williams* (6). Price had lawful possession of the child's body, and it was not only his right but his duty to dispose of it by burying or in any other manner not in itself illegal. Hence I must consider the question whether to burn a dead body instead of burying is in itself an illegal act.

After full consideration, I am of opinion that a person who burns instead of burying a dead body does not commit a criminal act, unless he does it in such a manner as to amount to a public nuisance at common law. My reason for this opinion is that, upon the fullest examination of the authorities, I have, as the preceding review of them shews, been unable to discover any authority for the proposition that it is a misdemeanour to burn a dead body, and in the absence of such authority I feel that I have no right to declare it to be one.

There are some instances, no doubt, in which Courts of justice have declared acts to be misdemeanours which had never previously been decided to be so, but I think it will be found that in every such case the act involved great public mischief or moral scandal. It is not my place to offer any opinion on the comparative merits of burning and burying corpses; but before I could hold that it must be a misdemeanour to burn a dead body, I must be satisfied not only that some people, or even that many people, object to the practice, but that it is, on plain, undeniable grounds, highly mischievous or grossly scandalous. Even then I should pause long before I held it to be a misdemeanour, for many acts involving the grossest indecency and grave public mischief—incest, for instance, and (where there is no conspiracy) seduction or adultery—are not misdemeanours; but I cannot take even the first step. Sir Thomas Browne finishes his famous essay on Urn Burial with a quotation from Lucan, which, in eight words, seems to sum up the matter: "Tabesne cadavera solvat, an rogus, haud refert" (7). Whether decay or fire consumes corpses matters not. The difference between the two processes is only that one is quick, the other slow. Each is so horrible that every healthy imagination would turn away from its details; but one or the other is inevitable, and each may be concealed from observation by proper precautions. There are, no doubt, religious convictions and feelings connected with the subject which every one would wish to treat with respect and tenderness, and I suppose there is no doubt that, as a matter of historical fact, the disuse of burning bodies was due to the force of those sentiments. I do not think, however, that it can be said that every practice which startles and jars upon the religious sentiments of the majority of the population is for that reason a misdemeanour at common law. The statement of such a proposition, in plain words, is a sufficient refutation of it, but nothing short of this will support the conclusion that to burn a dead body must be a misdemeanour. As for the public interest in the matter, burning, on the one hand, effectually prevents the bodies of the dead from poisoning the living. On the

(7) "Nil agis hac irâ; tabesne cadavera solvat, An rogus, haud refert; placido natura receptat Cuncta sinu, finemque sui sibi corpora debent."
Lucan's *Pharsalia*, vii. l. 809.

other hand, it might, no doubt, destroy the evidence of crime. These, however, are matters for the Legislature, and not for me. It may be that it would be well for Parliament to regulate or to forbid the burning of bodies, but the great leading rule of criminal law is that nothing is a crime unless it is plainly forbidden by law. This rule is, no doubt, subject to exceptions, but they are rare, narrow, and to be admitted with the greatest reluctance, and only upon the strongest reasons.

This brings me to the last observation I have to make. Though I think that to burn a dead body decently and inoffensively is not criminal, it is obvious that if it is done in such a manner as to be offensive to others it is a nuisance of an aggravated kind. A common nuisance is an act which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all her Majesty's subjects. To burn a dead body in such a place and such a manner as to annoy persons passing along public roads or other places where they have a right to go is beyond all doubt a nuisance, as nothing more offensive, both to sight and smell, can be imagined. The depositions in this case do not state very distinctly the nature and situation of the place where this act was done; but if you think, upon enquiry, that there is evidence of its having been done in such a situation and manner as to be offensive to any considerable number of persons, you should find a true bill.

Solicitors—Morgan & Rhys, Pontypridd, for the prosecution.

1883. Dec. 10. DINNING (*appellant*) *v.* THE GUARDIANS OF THE SOUTH SHIELDS UNION (*respondents*).

Poor—Maintenance of Married Woman—Order on Husband—31 & 32 *Vict. c.* 122 (*Poor Law Amendment Act*, 1868), *s.* 33.

By section 33 *of* 31 & 32 *Vict. c.* 122, *it is enacted that the Justices may make an order upon a husband "to pay such sum, weekly or otherwise, towards the cost of the relief of his wife as after consideration of all the circumstances of the case shall appear to them to be proper":*—Held, *by* STEPHEN, J., *and* MATHEW, J. (LORD COLERIDGE, C.J., *dissenting*), *that the Justices cannot, under this section, order a husband to pay a greater sum weekly than the allowance granted by the guardians to the wife by way of relief.*

This was a Case stated by Justices on the hearing of a complaint by the respondent guardians against the appellant that his wife Elizabeth Dinning had become chargeable to their union, and calling upon him to shew cause why an order should not be made on him to pay a sum weekly towards her relief and maintenance.

It was proved that Elizabeth Dinning was the appellant's wife, that she had become chargeable to the union, and that the appellant had sufficient means to maintain her. The relieving officer proved that the respondent guardians had granted to the woman an allowance of 3*s.* a week as relief.

The Justices made an order on the appellant to pay 15*s.* a week to the relieving officer towards his wife's relief and maintenance; and they stated this Case to raise the question whether they had jurisdiction to make such order.

Bremner (*Lumley Smith, Q.C.*, with him), for the appellant.—The clear intention of the section (31 & 32 Vict. c. 122. s. 33) was to indemnify the guardians against expenses actually incurred or to be incurred in respect of a woman whose husband should be possessed of sufficient means to pay the necessary amount of relief. This order would compel the husband to pay a sum the large proportion of

which would go in aid of the ratepayers generally.

A. Cock, for the respondents.—There is no such limit as is suggested enforced by the section. The guardians when they make the order may not have decided, nor have been able to decide, what is the amount which the woman should be allowed for relief. The whole matter is left to their discretion.

MATHEW, J.—I think that this order was wrong. The Justices could not, in my opinion, make an order on the husband to pay a sum irrespective of the question of what the guardians might actually allow as relief to the wife. The section deals with the case where a married woman requires relief independently of her husband; and although, in the latter part of it, the words are general, and seem to authorise the Justices to make an order for the payment of such sum as they shall think proper, yet the condition precedent to the guardians acting under the section at all is that the woman should have become chargeable. If she has become chargeable, the guardians will know something of her requirements; it is they also who institute the proceedings and bring the husband before the Justices, and the sum ordered to be paid is expressed to be "towards the cost of the relief of the wife." These considerations lead me to the conclusion that the Legislature intended that the sum which the Justices have jurisdiction to order to be paid by the husband, is a sum equal to or less than that which the guardians have to pay for relief.

STEPHEN, J.—I am of the same opinion. I admit that the section is not clear, and my doubt as to its meaning is strengthened by the fact that my Lord differs from the opinion I have formed as to it.

The difficulty arises from the two parts of the section not corresponding. The earlier part requires the husband to shew cause why an order should not be made upon him to maintain his wife, and the latter part says that he may be ordered to pay what the Justices think to be proper towards the cost of the relief of his wife. I have, however, come to the conclusion that the change of phraseology in the latter part of the section must have effect given to it. The enacting part is that an order may be made, not "to maintain his wife," but to pay such sum as may appear proper "towards the cost of the relief of the wife."

If the Legislature meant the sum to be absolutely in the Justices' discretion, they could easily have said so; but I think that the difference in the language points to an intended limitation on their discretion. It is limited, so that the order cannot be for the payment of more than the relief actually given.

I am confirmed in this view by the consideration that the section seems throughout to regard the guardians and not the wife as the interested party, because they and not the wife are to make the application. But, if they are interested, they are interested only to the extent of the sum which they pay as relief to the wife. Although the Justices are to consider all the circumstances of the case, this direction does not seem to me to enlarge their power, and those words are easily satisfied on either construction of the section. I cannot, however, give any effect to the enacting words at the end of the section except by holding that they fix the maximum of the amount which may be ordered — namely, the amount of the relief given. I therefore think the order was wrong.

LORD COLERIDGE, C.J.—I need hardly say that, as my learned brothers differ from me in the view to be taken of this section, I entertain great doubt of the correctness of my own view: and, indeed, had they agreed with me, I should still think the question to be a very arguable one. The two parts of the section do not, as has been pointed out, correspond; and the question is, what do the words "towards the cost of the relief of the wife" mean, fairly interpreted, and having regard to the context?

I think they must mean the same thing as the maintenance of the wife. It is true that the wife must be chargeable before the Justices have jurisdiction, and that the guardians are the persons to make application; but when those conditions are fulfilled, what is it that the Justices have power to do?

Now I desire so to construe the section

as to reconcile the two portions of it; and as the husband may be summoned to shew cause why he should not be ordered to maintain his wife, and as the Justices are to order the payment of such sum "as after consideration of all the circumstances of the case shall appear to them to be proper," and as "they shall determine how and to whom" the payment shall be made, it seems to me that the expression "cost of relief" is really intended to be equivalent to maintenance of the wife. This conclusion appears to me to make the section more consistent with itself than the interpretation put upon the words by my learned brothers, which involves the right to summon the husband to shew cause against an order to maintain his wife, and then restricts the Justices to the ordering payment of so much only as the guardians have allowed as relief. I therefore come to the conclusion, though not without hesitation, that the Justices were right, and that their order should be affirmed. As, however, my brothers are of a contrary opinion, the order must be quashed, and the case remitted, that the Justices may make an order in conformity with the decision of the majority of the Court.

Order quashed.

Solicitors—J. S. Coleman, agent for J. J. Bentham, for appellant; Iliffe, Russell, Iliffe & Cardale, agents for Mabane & Graham, South Shields, for respondents.

1884. Feb. 26.

THE GUARDIANS OF THE PARISH OF LIVERPOOL (*appellants*) *v.* THE GUARDIANS OF THE PORTSEA UNION (*respondents*).

Poor—Divided Parishes Act (39 & 40 *Vict. c.* 61), *s.* 35—*Pauper—Order of Removal — Children under Sixteen—Birth Settlement of Father—Widowed Mother—Derivative Settlement.*

G. M. was born in Liverpool, and never acquired a settlement for himself. G. M. died in 1882, *leaving a widow (who had no other settlement save what she acquired from her husband) and five children, none of whom were born in Liverpool. The children, who were under the age of sixteen and unemancipated, became chargeable to Portsea Union, and were ordered to be removed to Liverpool:*—Held, *upon the above facts, that the order of removal was rightly made, inasmuch as the children took their father's birth settlement in Liverpool, without any enquiry being necessary as to the settlement of their widowed mother.*

Case stated pursuant to 12 & 13 Vict. c. 45. s. 11.

1. On the 20th of February, 1883, an order was made by Justices, on the complaint of the respondents, that Verena Ada Meredith, aged about thirty-two years, and her children—William George aged about nine, and George aged about seven, Ada aged about five, Minnie Amelia aged about two and a half, and Thirza Louisa aged one year—should be removed from the respondents' union to the appellants' parish, they having adjudged them to be settled in the appellants' parish.

2. The pauper Verena Ada Meredith was, on the 21st of December, 1871, married to George Meredith, then a soldier in Her Majesty's 46th Regiment.

3. The paupers William George Meredith, George Meredith, Ada Meredith, Minnie Amelia Meredith and Thirza Louisa Meredith, are the children of the said George Meredith and his wife Verena Ada Meredith. None of the said children were born in the appellant parish.

4. The said George Meredith died at Derby on the 9th of March, 1882, and his widow and children (the paupers) came to reside in the respondents' union on the 18th of November, 1882.

5. The said George Meredith was born on the 3rd of March, 1842, in Titchfield Street, Liverpool, within the appellant parish, and was the lawful issue of Peter Meredith and Mary Ann his wife.

6. The said George Meredith never acquired a settlement for himself. He entered Her Majesty's service as a drummer-boy, and left Liverpool at the age of thirteen, and remained in Her Majesty's service until the 13th of July, 1880.

Guardians of Liverpool v. *Guardians of Portsea Union.*

7. Peter Meredith survived the completion of George Meredith's sixteenth year.

8. Verena Ada Meredith had no other settlement than that (if any) acquired by marriage at the time of her husband's death, and has acquired none since.

The question for the opinion of the Court was whether, upon the facts stated, the said order was rightly made (1).

W. R. Kennedy, for the appellants.—It is admitted that the elder pauper is settled in the appellants' union, but it is contended that the children are not settled there, but in the place of their birth. The first part of section 35 of 39 & 40 Vict. c. 61 is to be read in connection with the last clause of that section.

Proof of the place of George Meredith's birth is but *prima facie* evidence of the place of his settlement, and an enquiry would have to be made for the purpose of ascertaining whether a derivative settlement had been acquired from his parents, which is not permissible: accordingly, the pauper children must be held to be settled in the place where they were born.

[LORD COLERIDGE, C.J.—There is no evidence here that George Meredith ever took a derivative settlement.]

At any rate, under the first part of section 35, the children would take the settlement of their "widowed mother"; inasmuch, however, as her settlement was a derivative one only, and it could not, therefore, be shewn what settlement the children derived from their parent "without enquiring into the derivative settlement of such parent," clause 3 enacts that the children shall be deemed to be settled in the parish in which they were born, which was not within the appellants' union. He cited *The Guardians of Marylebone* v. *The Guardians of Wycombe* (2) and *The Madeley Union* v. *The Bridgnorth Union* (3).

Arthur Charles, Q.C. (*W. Barnes* with him), for the respondents, was not called upon to argue.

LORD COLERIDGE, C.J.—I confess I feel no difficulty in construing this Act of Parliament, the language of which, to my mind, is reasonably clear.

The father's birth settlement was in Liverpool; his wife had no settlement of her own, and therefore she acquired her husband's settlement. We have now to do with the children; and they, as it seems to me, are also settled in Liverpool. It is said there is a difficulty in thus holding, because of the words of the 35th section. By that section it is provided that "No person shall be deemed to have derived a settlement from any other person, whether by parentage"—that is to say, something different from birth—"estate or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen,"—which is the case here—"which child shall take the settlement of its father or widowed mother, as the case may be, up to that age," and so on. A child, therefore, under the age of sixteen is to take the settlement of its father or of its widowed mother—that is to say, the settlement of the father, where it can be found; and if it cannot be found, then of its widowed mother, as the case may be. Here the settlement of the father and mother is the same, and the father's settlement is a birth settlement in Liverpool, and the mother's settlement is also at Liverpool by virtue of her marriage. Accordingly, the children's settlement is also at Liverpool, by the distinct words of the statute. But it has been argued that, however clear this conclusion may be under the first part of the section,

(1) By the Divided Parishes, &c., Act (39 & 40 Vict. c. 61), s. 35, "No person shall be deemed to have derived a settlement from any other person, whether by estate, parentage or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another. . . . If any child in this section mentioned shall not have acquired a settlement for itself, or, being a female, shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

(2) *Ante*, p. 12.

(3) 52 Law J. Rep. M.C. 71; Law Rep. 11 Q.B. D. 314.

there is a distinct enactment in the 3rd clause which governs the earlier part of the section. That enactment runs as follows: "If any child in this section mentioned shall not have acquired a settlement for itself"—which is this case —"or, being a female, shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent"—that is to say, of its father or widowed mother, as the case may be—"such child or female shall be deemed to be settled in the parish in which he or she was born." That enactment seems to me to mean that if a child is unsettled, and you cannot get at the settlement of the child without enquiring into the derivative settlement of the father or mother—that is to say, without going beyond the settlement of the father, or, in other words, without going a step higher in the pedigree—then the birthplace of the child is to be deemed its settlement. The section is really, as it seems to me, not an obscure one. Where the father's settlement, whether by parentage or birth, is known, the latter part of the section does not apply, because the difficulty provided for does not arise. Our judgment, therefore, in no way, as it seems to me, conflicts with the latter part of the section.

POLLOCK, B.—I agree, and only desire to add that the meaning of the section is, to my mind, tolerably clear—namely, that the children are to take the settlement of their father, if he has one, or of their widowed mother, as the case may be. In my judgment it is altogether unnecessary in this case to enquire into the derivative settlement of the father.

Judgment for respondents.

Solicitors—Field, Roscoe & Co., agents for Bellringer & Cunliffe, Liverpool, for appellants; Sole, Turner & Knight, agents for Besant & Wills, Portsea, for respondents.

[IN THE COURT OF APPEAL.]

1884. Feb. 18. } ILLINGWORTH *v.* THE BULMER EAST HIGHWAY BOARD.*

Practice—Appeal—Special Case stated by Quarter Sessions—Removal into Queen's Bench Division by certiorari—Highway Act, 1835 (5 *& 6 Will.* 4. *c.* 50), *ss.* 107 *and* 108—*Judicature Act*, 1873, *ss.* 19 *and* 45.

An appeal lies without leave from a judgment of the Queen's Bench Division on a Special Case stated by Quarter Sessions pursuant to the Highway Act, 1835, *section* 108, *as the Queen's Bench Division, in giving judgment on such a case, exercises its own original common law jurisdiction, and not any new statutory appellate jurisdiction.*

The Queen *v.* The Swindon Local Board (49 Law J. Rep. Q.B. 522) *distinguished.*

Appeal from the judgment of the Queen's Bench Division.

The case is reported 52 Law J. Rep. Q B. 680.

The Bulmer East Highway Board were summoned, on the complaint of John Illingworth, before Justices in Petty Sessions for the non-repair of a road. The Justices, after making an order for a survey of the road, ordered the board to repair it. The board failed to obey that order, whereupon the Justices appointed a surveyor to repair the road, and ordered the board to pay to him the cost of the repairs.

The highway board appealed to Quarter Sessions against this order, and the Quarter Sessions quashed it, but stated the facts specially for the opinion of the Queen's Bench Division pursuant to 5 & 6 Will. 4. c. 50. s. 108 (1). The case was removed

* *Coram* Brett, M.R.; Cotton, L.J., and Bowen, L.J.

(1) 5 & 6 Will. 4. c. 50. s. 107: "No rate .... or any order made .... shall be removed or removable (except as herein mentioned) by *certiorari* or any other writ or process whatsoever into any of his Majesty's Courts of Record at Westminster."

Section 108: "And be it further enacted that in any case of appeal the Court of Quarter Sessions, before whom the same is heard and determined, may, if they think fit, state the facts specially for the determination of his Majesty's Court of King's Bench thereon, in which case it shall be lawful to remove the proceedings by writ of *certiorari* or otherwise into the said Court of King's Bench."

by *certiorari* into the Queen's Bench Division, where the order of Quarter Sessions was quashed and judgment given for the appellant. Leave to appeal was not given.

The highway board appealed.

Forbes, Q.C., and *Yarborough Anderson*, for the respondents, took a preliminary objection.—This Court has no jurisdiction to entertain the appeal. The order for payment of the costs of repairing the road was appealed against, and the Quarter Sessions quashed that order and stated a Special Case for the opinion of the Queen's Bench Division, and that case was removed, pursuant to 5 & 6 Will. 4. c. 50. s. 108 (1), into the Queen's Bench Division. The Queen's Bench Division gave judgment quashing the order of Quarter Sessions, and did not give leave to appeal. The case is therefore governed by *The Queen* v. *The New Swindon Local Board* (2), and no appeal can be brought.

[COTTON, L.J.—In that case the Public Health Act, 1875, gave power to state a case for the determination of a superior Court; but the 5 & 6 Will. 4. c. 50. s. 108 (1) only gives power to state the facts for the determination of the King's Bench. BOWEN, L.J.—Is not this case the same in principle as *The Overseers of Walsall* v. *The London and North-Western Railway Company* (3)?]

The Queen's Bench Division does not exercise its original jurisdiction in such a case as this, but a purely appellate jurisdiction, and, moreover, leave to appeal was given in the *Walsall Case* (3).

[COTTON, L.J.—That was held to be immaterial.]

In *The Queen* v. *Savin* (4) the appeal was heard, but in that case also the Queen's Bench Division was held to have exercised its original common law jurisdiction. In this case the Queen's Bench Division would, if it thought the order of Sessions wrong, enter judgment; but it would not remit the case to the Sessions. In the *Walsall Case* (3) the question turned entirely on section 19 of the Judicature Act, 1873; but in this case the provisions of section 45 must also be satisfied.

Charles, Q.C., and *J. S. Fox*, for the appellants.—The Highway Act (5 & 6 Will. 4. c. 50), s. 108 (1), does not give any new appellate jurisdiction, as did the Public Health Act, 1875 (38 & 39 Vict. c. 50. s. 269). It abolishes removals by *certiorari*, except in the particular case mentioned in section 108 (1).

[They were stopped by the Court.]

BRETT, M.R.—We are all of opinion that we must hear this appeal. The case falls within the principle of the decision in *The Overseers of Walsall* v. *The London and North-Western Railway Company* (3) and *The Queen* v. *Savin* (4), and not within the principle of the judgment in *The Queen* v. *The Swindon Local Board* (2).

COTTON, L.J.—The case of *The Queen* v. *The Swindon Local Board* (2) is different from this case. Here the proceedings took place under the provisions of the Highway Act, 1835 (5 & 6 Will. 4. c. 50). Section 105 of that statute gives a right of appeal to Quarter Sessions; then section 107 (1) enacts that no proceedings shall be removed by *certiorari* into the superior Court; but section 108 (1) provides that the Court of Quarter Sessions may state the facts specifically for the determination of the Court of King's Bench, in which case it shall be lawful to remove the proceedings by *certiorari* or otherwise into the Court of King's Bench.

If, therefore, a Special Case is stated for the opinion of the Queen's Bench Division pursuant to the provisions of section 108 (1), there is no new jurisdiction given to the Queen's Bench Division; it then exercises its original jurisdiction, and not any new appellate jurisdiction such as that which was created by the Public Health Act, 1875, section 269. That is the distinction between the present case and the case of *The Queen* v. *The Swindon Local Board* (2). There was in the circumstances of that case no original jurisdiction existing prior to the statute under which that appeal was brought, and by that statute an appeal was given by way of Special Case to "a superior Court." The present case, therefore, is within the judg-

(2) 49 Law J. Rep. Q.B. 422.
(3) 48 Law J. Rep. M.C. 65; Law Rep. 4 App. Cas. 30.
(4) Law Rep. 6 Q.B. D. 309.

ment in *The Overseers of Walsall* v. *The London and North-Western Railway Company* (3), and section 45 of the Judicature Act, 1873, does not apply, for in this case the Queen's Bench Division was exercising its own original jurisdiction.

BOWEN, L.J.—I am of the same opinion. This case is stated under 5 & 6 Will. 4. c. 50. s. 108 (1), and the Queen's Bench Division deals with it in the well-known exercise of its ordinary jurisdiction.

[The appeal was then heard, and dismissed on the ground that no dispute was raised before the Justices, that no objection was taken to their jurisdiction, and that the liability of the appellants was then admitted.]

Judgment accordingly.

Solicitors—Smiles & Co., agents for R. & R. P. Dale, York, for appellants; Bolton, Robbins, Busk & Co., agents for E. & J. Peters, York, for respondents.

1884. Feb. 23. } POINTON AND BOOT (*appellants*) v. HILL (*respondent*).

Idle and Disorderly Person—Begging—Special Occasion—5 *Geo.* 4. *c.* 83. *s.* 3.

During a strike some of the workmen went about begging for alms for the men on strike and their families:—Held, *that, the begging being only for a special occasion, no offence had been committed against* 5 *Geo.* 4. *c.* 83. *s.* 3, *which enacts that every person wandering abroad or placing himself in a public place to beg or gather alms shall be deemed an idle and disorderly person.*

Case stated under 20 & 21 Vict. c. 43, by the stipendiary magistrate for Stoke-upon-Trent.

An information was preferred by the respondent (the chief superintendent of police at Burslem) against the appellants, charging that the appellants on the 5th of October, 1883, unlawfully wandered abroad in a public thoroughfare at Burslem, begging and gathering alms, contrary to the statute (1).

Upon the hearing of the information the following facts were proved or admitted:—On the 5th of October, 1883, a number of colliers on strike, of whom the appellants were two, residing at Silverdale, which is distant four miles from the town of Burslem, and is in another parish, were at Burslem in a public street called Newcastle Street. Some of them were drawing a waggon, on which was inscribed "Children's bread waggon"; whilst others called from house to house with collecting books and begged for assistance in money or kind. The appellant Boot went into a shop and asked the shopkeeper therein to assist the miners. He had a collecting book with him. The appellant Pointon went into a private house and asked a woman there for bread for the children. She gave him a cabbage, which he took from her and put into the waggon. He had a similar book with him. It was admitted that the appellants were not disorderly, and that their demeanour was not improper. They had fixed places of abode as householders at Silverdale. The men had wives and mothers and families.

It was contended on behalf of the appellants that they were not guilty of an offence against the statute (1), inasmuch as the request for contributions was not made in any public place, street, highway, court or passage, but on private premises, namely in a shop and a private house; and, further, the statute was intended for the discouragement of people who wandered about the country with no fixed place of abode, no legitimate means of livelihood, and no desire to enter upon honest labour, and, the object of the appellants' request being lawful, did not apply at all to such a case as this, which was simply like asking alms for a charity.

(1) 5 Geo. 4. c. 83. s. 3 enacts "... Every person wandering abroad, or placing himself or herself in any public place, street, highway, court or passage, to beg or gather alms, or causing ... any child or children so to do, shall be deemed an idle and disorderly person, ... and it shall be lawful for any Justice of the peace to commit such offender ... to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month."

Pointon v. *Hill.*

The magistrate was of opinion that the appellants were, within the meaning of 5 Geo. 4. c. 83. s. 3 (1), persons wandering about to beg or gather alms, and convicted the appellants, and imposed upon them a fine of 5*s.* each and costs.

The question for the opinion of the Court was whether his decision was correct in point of law? If correct, the conviction was to stand; if not, the conviction was to be quashed.

Jelf, Q.C. (*Rose* with him), for the appellants.—If this conviction was right, then persons collecting alms for a hospital or other charity—say, for the Hospital Saturday Fund—are frequently liable to be similarly convicted. The statute (1) does not apply at all to any such case as this: it is directed, as its title suggests, against certain modes of life. Among the offenders mentioned in the section is "every common prostitute wandering in the public streets . . . . and behaving in a riotous and indecent manner." Although by the Summary Jurisdiction Act, 1879, the punishment may be mitigated, the punishment originally was to be imprisonment with hard labour. It is unnecessary to rely on narrower objections to the conviction—that the appellants, being near their own homes, could not be "wandering abroad" within the meaning of the statute, and that they were not in a public place to beg or gather alms, but in a shop and a private house.

The respondent did not appear.

CAVE, J.—I am of opinion that this conviction must be quashed.

The Act under which the appellants were convicted is 5 Geo. 4. c. 83, entitled an Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England. Sections 1 and 2 of that Act are repealing sections. Section 3 enacts that "Every person . . . able . . . to maintain himself or . . . his . . . family . . . and . . . neglecting so to do" whereby he or his family become chargeable to the parish; "every person returning . . . and becoming chargeable" to "any parish from whence he . . . shall have been legally removed . . . ; every petty chapman or pedlar wandering abroad and trading without being duly . . . authorised . . . ; every common prostitute wandering in the public streets or . . . highways, or in any place of public resort, and behaving in a riotous or indecent manner; and" (these being the words with which we have to deal) "every person wandering abroad or placing himself or herself in any public place, street, highway, court or passage, to beg or gather alms, or causing . . . any child or children so to do," "shall be deemed an idle and disorderly person," and any Justice of the peace may commit such offender to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month.

This Act, saying that certain persons should be deemed idle and disorderly persons, was, I think, directed against persons adopting a particular mode of life, and not against persons who shew no sign of adopting an objectionable mode of life, and consequently I think does not apply against the appellants.

A strike is not unlawful, and these workmen might in their unfortunate dispute with their employers be right or wrong. The appellants were not, I think, liable under the Act to be treated as idle and disorderly persons, when they, in the manner described in the Case, went round soliciting alms for this particular occasion, —conducting themselves (it is expressly said) in a way which was not disorderly or improper,—unless the Act also applies to any person who goes from house to house soliciting contributions to a hospital, or stations himself or herself in a street to receive contributions for a like object (say as a collector for the Hospital Saturday Fund), and I am of opinion that the Act does not so apply. If a poor man, losing his cow, or losing his horse, and therewith a principal part of the means whereby he earns a livelihood, goes round asking for help towards replacing that which he has lost, he in a sense comes within the words of the Act; but doing what he so does only for a particular occasion, not doing it as a mode of life, and not doing that from which the adopting of an objectionable mode of life can be inferred, he does not, I think, come within the Act rightly construed.

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And, reading the Act, as I do, in that way, I hold that it does not apply to this case. I am of opinion that hard-working people doing as the appellants have done are not liable to be convicted under the Act.

SMITH, J.—I agree in all that my brother Cave has said, and I have nothing to add.

Conviction quashed.

Solicitors—Robinson, Preston & Stow, agents for Hollinshead & Moody, Tunstall, for appellants.

1883. Dec. 14. COLAM (*appellant*) *v.* PAGETT (*respondent*).

Cruelty to Animals—12 & 13 *Vict. c.* 92. *ss.* 2 *and* 29, *and* 17 & 18 *Vict. c.* 60. *s.* 3—"*Domestic Animal*"—*Decoy Bird.*

Linnets caught, kept in captivity, and trained to act as decoy birds, for the purpose of catching other birds, were treated with cruelty:—Held, *that they were "domestic animals" under the protection of* 12 & 13 *Vict. c.* 92. *ss.* 2 *and* 29, *as amended by* 17 & 18 *Vict. c.* 60. *s.* 3.

This was a Case stated under 20 & 21 Vict. c. 43, by Justices at Petty Sessions held at Beaconsfield in Buckinghamshire.

An information was preferred by the appellant against the respondent, under 12 & 13 Vict. c. 92. s. 2 (1), charging that the respondent did cruelly ill-treat, abuse and torture certain animals—to wit, five linnets (the same being used as decoy birds), by wounding them with a string and fastening them to the ground. Upon the hearing of the information the following facts were proved or admitted:—The respondent, on the 29th of July, 1883, on a piece of waste ground, had nets set for catching birds. He had five linnets, each tied under the wing and round the breast with a string, and to a stick which he kept moving by pulling another string, by which the bird was forcibly driven into the air, afterwards falling on the ground on its breast, and then jumping on the stick and twittering. The birds were very red where the string was tied, and had suffered so much that they could not fly, and the skin of one of them was cut through. They had been caught by the respondent nearly a year before, and he had since kept them in his house in cages, and had trained them to act as decoy birds. The Justices had no doubt that the respondent did cruelly ill-treat, abuse and torture the birds as alleged, but doubted whether the birds were domestic animals within the meaning of the Act (1), and therefore dismissed the information. The question for the opinion of the Court was whether the birds in question were at the time of the offence animals under the protection of the Act (1).

Morton Smith (*Walton* with him), for the appellant.—Birds caught, kept in captivity, and trained, are animals within the protection of 12 & 13 Vict. c. 92. s. 2 (1), which extends, by virtue of the interpretation clause in 17 & 18 Vict. c. 60. s. 3 (1), amending 12 & 13 Vict. c. 92. s. 29 (1), to all domestic animals.

The respondent did not appear.

The Court (2) were of opinion that linnets kept as these were, were within the protection of the Act (1).

Case remitted.

Solicitor—A. Leslie, for appellant.

(1) 12 & 13 Vict. c. 92, s. 2, enacts that "if any person shall . . . . cruelly beat, ill-treat, over-drive, abuse or torture . . . . any animal, every such offender shall . . . . forfeit a penalty not exceeding 5*l.*"

Sect. 29: "For the purposes of this Act the following . . . . expressions . . . . have the meanings hereby assigned . . . . so far as such meanings are not excluded by the context, or by the nature of the subject-matter. . . . . 'Animal' shall be taken to mean any horse . . . . ox, . . . ass, . . . sheep, . . . pig, . . . goat, dog, cat or any other domestic animal."

17 & 18 Vict. c. 60. s. 3: "The . . . . word 'animal' shall in" 12 & 13 Vict. c. 92, "and in this Act, mean any domestic animal, whether of the kind or species particularly enumerated in clause 29 of the said Act, or of any other kind or species whatever, and whether a quadruped or not."

(2) Huddleston, B., and Stephen, J.

[IN THE COURT OF APPEAL.]

1884. Jan. 28. THE QUEEN (*on the prosecution of* BERKELEY) *v.* THOMPSON AND OTHERS.*

Bastardy — Jurisdiction — Service in Scotland of Summons issued in England —Bastardy Laws Amendment Act, 1872 (35 & 36 *Vict. c.* 65), *ss.* 3 *and* 4—*Summary Jurisdiction Act*, 1879 (42 & 43 *Vict. c.* 49), *ss.* 51 *and* 54—*Summary Jurisdiction (Process) Act*, 1881 (44 & 45 *Vict. c.* 24), *s.* 6.

Where a bastardy summons which has been issued by a Justice of the place where the woman resides in England has been indorsed by a Court of summary jurisdiction in Scotland and served in Scotland on the defendant who is there resident, the Justices in England have no jurisdiction to hear and adjudicate upon the summons, notwithstanding that the defendant appears before them by a solicitor who objects to the jurisdiction.

Appeal of the prosecutrix, I. Berkeley, from a judgment of the Queen's Bench Division discharging a rule *nisi* to Justices to hear and determine a bastardy summons.

On the application of a woman resident in Sunderland, a Justice of that borough issued a bastardy summons under section 3 of the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65). The summons was indorsed by a Court of summary jurisdiction in Scotland, and was served in Scotland on the defendant, who resided there.

The defendant appeared at the hearing by a solicitor, who objected on his behalf to the jurisdiction of the Justices, on the ground that the defendant was not within the jurisdiction of the Court, within the meaning of section 6 of the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24). The Justices allowed the objection, and refused to hear the summons.

The prosecutrix then obtained a rule *nisi* to the Justices, which was afterwards discharged.

The prosecutrix appealed.

* *Coram* Brett, M.R., and Bowen, L.J.

Bruce, Q.C., and *H. B. H. Hamilton*, for the appellant.—The fact of the father having appeared, though only to object to the jurisdiction, renders it immaterial whether the service of the summons was proper or not—*Oulton* v. *Radcliffe* (1) and *The Queen* v. *Smith* (2). Formerly there was no jurisdiction to serve a summons on a putative father out of England—*The Queen* v. *Lightfoot* (3); but by the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24), ss. 4 and 8, express power is given to serve the summons in Scotland. By section 4 any process issued by a Court of summary jurisdiction in England and indorsed by a similar Court in Scotland may be served within the jurisdiction of the indorsing Court in like manner as it may be served within the jurisdiction of the issuing Court. The moment the bastardy summons issues, it becomes a process within the Act of 1881. Section 54 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), expressly refers to service of a bastardy summons. By section 51, sub-section 2, of that Act, where by any future Act a sum of money is directed to be recovered on complaint to a Court of summary jurisdiction, the Summary Jurisdiction Acts are to apply. By section 6 of the Act of 1881 an English or Scotch Court of summary jurisdiction may adjudge a person "within the jurisdiction of the Court"—that is, a person brought within the jurisdiction by section 4—to pay for the maintenance of a bastard child. Therefore the order to pay is within section 51 of the Act of 1879.

Poland, for the respondents, was not called upon.

BRETT, M.R.—We have come to the conclusion that it is clear that this case is not within any Act of Parliament at all. A woman residing in England makes a complaint that a man is the putative father of her illegitimate child. Under what power could she do that originally? Under

(1) 43 Law J. Rep. C.P. 87; Law Rep. 9 C.P. 189.

(2) 37 Law J. Rep. M.C. 6; Law Rep. 1 C.C.R. 110.

(3) 6 E. & B. 822; 25 Law J. Rep. M.C. 115.

the Bastardy Laws Amendment Act, 1872, which gave jurisdiction over the subject-matter of the complaint to the Justices of the place where she resided. But to have jurisdiction over the subject-matter of complaint is not enough: there must also be jurisdiction over the person against whom the complaint in respect of the subject-matter is made. That jurisdiction was given to the same Justices, who alone could summon the man if he was in England—though that jurisdiction did not go further than England, as decided in *The Queen* v. *Lightfoot* (3). It follows, therefore, that if after he was summoned he did not appear, the case could be heard in his absence. As long as that was the only statute a woman could not bring the man within the jurisdiction of the Justices who had jurisdiction over the subject-matter, unless he was in England. By section 6 of the Summary Jurisdiction (Process) Act, 1881, she has a further remedy, and the question is how far that goes. That section deals with the case of a woman resident in England who wishes to charge a putative father who is resident in Scotland. It says that "a Court of summary jurisdiction in England and a Sheriff Court in Scotland shall respectively have jurisdiction, by order or decree, to adjudge a person within the jurisdiction of the Court to pay for the maintenance and education of a bastard child of which he is the putative father, . . . notwithstanding that such person ordinarily resides, or the child has been born or the mother of it ordinarily resides, where the Court is English, in Scotland, or where the Court is Scotch, in England, in like manner as the Court has jurisdiction in any other case." The reading of the statute seems to me to be that it gives jurisdiction to magistrates who are not of the district where the woman resides, and that when the woman ordinarily resides in England, a Scotch Court may, notwithstanding that, make an order against the father if he is within the jurisdiction, that is, in Scotland. So, in like manner, if the mother ordinarily resides in Scotland and the father in England, the Justices here may make an order against him, although the mother ordinarily resides in Scotland. Therefore it gives the mother a larger remedy than before: so that if she goes into Scotland and the father is within the jurisdiction of the Scotch Court, the Sheriff Court may make an order against him. The section negatives the idea that an English Court may make an order against a person who is in Scotland, and therefore not within its jurisdiction. It is for the Scotch Court to do that. Therefore the section does not reach this case.

It was suggested that section 51 of the Summary Jurisdiction Act, 1879, coupled with the Summary Jurisdiction (Process) Act, 1881, would enable this summons to be issued. But section 54 of the former Act shews conclusively that the statute did not intend to deal with the service of summonses under the Bastardy Act. It says, "This Act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for non-payment of such sums, in like manner as if an order in any such matter or so enforceable were a conviction on information, and shall apply to the proof of the service of any summons, notice, process or document in any matter of bastardy, and of any handwriting or seal in any such matter, and to an appeal from an order in any matter of bastardy." It applies to the proof of service of any summons, and carefully leaves out the question of where the summons is to be served, and it does not enable a woman to issue a summons from England into Scotland. Where an English Court makes an order against a man resident in England, and then he goes to Scotland, the woman is enabled to follow him to Scotland and to get an order against him by indorsement of the process; but none of the sections carry the case far enough for the appellant. The policy of Parliament has been that where a woman has made good her charge against a man, the Court will assist her as much as possible. But it has feared to put too much power into the hands of a woman, who can easily make such a charge, and it will not enable her to bring a man from one part of the United Kingdom to another, and so give her additional power to support an unfounded claim. I am therefore of opinion that the Divisional Court

was right, and that the appeal should be dismissed.

BOWEN, L.J.—I am of the same opinion. I only wish to add, as to section 6 of the Act of 1881, that it is not now necessary to decide to what extent it increases the jurisdiction of the English and Scotch Courts respectively. I am not quite sure that there might not be some doubt on that point. But it is sufficient to say that the section does not increase it to the extent contended for by the appellant, and that it does not touch the case of a summons issued in England and attempted to be served in Scotland.

Appeal dismissed.

Solicitors—J., E. & H. Scott, agents for Graham & Shepherd, Sunderland, for plaintiff; Rooke & Sons, for defendant.

1883. Dec. 11, 18. } THE QUEEN *v.* THE WEST BROMWICH SCHOOL BOARD.

Poor—Rate—Rateable Value—Occupier under Restrictions—School Board.

A school board assessed to the poor rate in respect of their schools at substantial sums contended that, by reason of the statutory restrictions to which they were subject, they were not liable to be so assessed:—Held, *on the authority of* Jones *v.* The Mersey Docks (35 Law J. Rep. M.C. 1), *notwithstanding* The Mayor of Worcester *v.* The Droitwich Union (46 Law J. Rep. M.C. 241) *and* The Mayor of Peterborough *v.* The Stamford Union (31 W.R. 949), *that they were liable to be so assessed.*

On appeal to the Staffordshire Quarter Sessions against a poor rate, the rate was, by consent, confirmed, subject to the following Case:—

1. The appellants are the school board constituted under the Elementary Education Act, 1870, for the parish of West Bromwich, in the county of Stafford.

2. The respondents are the churchwardens and overseers of the poor of the parish of West Bromwich, and the assessment committee of the West Bromwich Union.

[3, 4, 5, 6. These paragraphs set out parts of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 18, 19, 53 and 54 (1).]

7. The appellants, under the powers of the Elementary Education Act, 1870, purchased the site of and erected the following elementary schools:—Greet's Green, Gun's Lane and Sam's Lane, at a cost respectively of 4,958*l.*, 6,715*l.* and 5,446*l.*

8. They also purchased Moor Street schools and Gold's Hill schools, which have cost respectively 2,950*l.* and 4,564*l.*

9. These sites and schools were conveyed to them in accordance with the Act, "unto and to the use of the said school board, their successors and assigns for ever; and so that the same . . . . shall be held upon trust for the purpose of a public elementary school, within the meaning of the Elementary Education Act, 1870, and for or towards the provision, in manner thereby authorised, of sufficient public school accommodation for the aforesaid district, and for no other purpose whatsoever."

10. The appellants also rent the following seven schools:—Dartmouth Street, Old Meeting Street or Ebenezer, Mayer's Green or Messenger's Lane, Queen Street,

(1) Section 18: "The school board shall maintain and keep efficient every school provided by such board, and shall from time to time provide such additional school accommodation as is in their opinion necessary in order to supply a sufficient amount of public school accommodation for their district. . . ."

Section 19: "Every school board, for the purpose of providing sufficient public school accommodation for their district, ... may provide, by building or otherwise, schoolhouses properly fitted up, . . . and purchase and take on lease any land and any right over land."

Section 53: "The expenses of the school board . . . . shall be paid out of a fund called the school fund. There shall be carried to the school fund all moneys received as fees from scholars, or out of moneys provided by Parliament, or raised by way of loan, or in any manner whatever received by the school board; and any deficiency shall be raised by the school board as provided by this Act."

Section 54: "Any sum required to meet any deficiency in the school fund . . . . shall be paid by the rating authority out of the local rate. . . ."

Spon Lane, Glover Street, Park Village, under agreements set out in Appendix A. [Each of these agreements contained a clause saying that the appellants were to use the premises for the purposes of a public elementary school, and a clause reserving to the landlords the use of the schools at specified times—for example, Sundays and week-day evenings.]

11. Neither the school fees, nor the moneys provided by Parliament, nor moneys raised by way of loan (if any) or received in any manner whatever by the appellants, have, without contribution from the rates, been sufficient to meet the ordinary and reasonable expenses of the appellants; and there has in every year been a deficiency, in respect of which the appellants have been compelled to require a rate to be levied, and which deficiency has been made good out of such rate in accordance with the Act.

12. In the valuation list now in force in the parish of West Bromwich, the schools owned and occupied by the appellants as aforesaid are assessed as follows :—

	Gross Estimated Rental	Rateable Value		Gross Estimated Rental	Rateable Value
	£	£	Rented Schools:—	£	£
Greet's Green Schools	38	30	Dartmouth Street .	6	5
Gun's Lane . . .	40	32	Old Meeting Street	16	13
Sam's Lane . . .	41	33	Messenger's Lane .	15	12
Moor Street . .	19	51	Queen Street . .	6	5
Gold's Hill . . .	34	27	Roebuck Street .	9	7
			Spon Lane . .	13	10
			Glover Street . .	19	15

13. On the 1st of July, 1882, a rate for the relief of the poor of the parish of West Bromwich, and for other purposes chargeable thereon, was made, after the rate of 1*s.* 4*d.* in the pound, on the above-mentioned property of the appellants, such rate being based on the said valuation list.

14. The appellants contend that they have no occupation of the schools specified in paragraph 10, nor any beneficial occupation, nor could any tenant under the same restrictions have any beneficial occupation of any of the schools.

15. The appellants, on the 29th of April, 1882, when the schools were rated at larger amounts than those set out in paragraph 12, gave to the respondents notice that they objected to the valuation list, on the ground, first, of inequality; and, secondly, that they were not rateable as the occupiers. The assessment committee fixed the rateable values as set out in paragraph 12.

16. The appellants, being dissatisfied with that decision, appealed to Quarter Sessions against the rate, specifying in their notice of appeal as among their grounds—first, that they were not occupiers; secondly, that they had no beneficial occupation.

17. The Quarter Sessions, by consent, confirmed the rate, subject to this Case.

18. The questions for the opinion of the Court are—

Whether the appellants were rateable to the relief of the poor in respect of the said schools, or any of them?

And whether they were entitled to any relief from Quarter Sessions?

If the appellants were rateable in respect of the said schools, or any of them, or were not entitled to relief from Quarter Sessions, the order of Quarter Sessions is to stand; but if the said schools, or any of them, were not rateable, and the appellants were entitled to relief from Quarter Sessions, the said order is to be quashed in whole or part, and the rate amended accordingly.

Anstie, Q.C. (*J. Rose* with him), for the appellants.—First, if the appellants were not rateable, the reductions made by the assessment committee clearly did not disentitle them to obtain relief from the Quarter Sessions. Secondly—even setting

aside the fact that, as to the rented schools, the appellants were not exclusive occupiers, the landlords reserving a right of occupation at certain times—the appellants were not rateable, or were not rateable beyond a merely nominal amount—practically *nil*—inasmuch as they had no beneficial occupation of the schools, and no occupier, under similar restrictions, could have any beneficial occupation—*The Mayor of Worcester* v. *The Droitwich Union* (2), *The Mayor of Peterborough* v. *The Stamford Union* (3) and *Hare* v. *The Putney Overseers* (4). In *The Mayor of Worcester* v. *The Droitwich Union* (2), where the corporation of Worcester, as being the local board of health, erected waterworks, and were assessed to the poor rate in respect of them upon the basis of the profit which might have been earned by a trading company unrestricted as to its charges, it was held, first by Cleasby, B., and Field, J., and afterwards by James, L.J., Mellish, L.J., and Baggallay, L.J., that that assessment was wrong, and that the restrictions put by law upon the corporation as to the profits derivable from the waterworks must be regarded. Mellish, L.J., in delivering the judgment of the Court of Appeal, said: "The question is whether, in applying the rule given by the Parochial Assessment Act (5), the Court is to consider what rent a tenant from year to year would give for the reservoir and waterworks who was subject to the same restrictions the corporation are subject to, or what rent a tenant from year to year would give who was subject to no such restriction. We are of opinion that the hypothetical tenant is to be a tenant subject to the restrictions. The case of *The Corporation of Liverpool* v. *The Overseers of Wavertree* (6) is directly in point, and we are of opinion that that case was correctly decided." The case so referred to was a decision of Blackburn, J., and Lush, J. In *The Mayor of Worcester* v. *The Droitwich Union* (2) the corporation of Worcester did not contest their liability to be rated at a certain amount, and it was not necessary to consider whether they were rateable at all; but the principles there laid down led logically to the conclusion that the corporation were not rateable at all, it being held that the corporation were restricted to levying such water rates as were requisite for maintaining the waterworks. And those principles were carried to their logical conclusion in *The Mayor of Peterborough* v. *The Stamford Union* (3), where Williams, J., and Smith, J., held that the corporation were not rateable at all in respect of their waterworks, on the ground that a tenant would not be willing to pay any rent for them if he were to be under similar restrictions as to the levying of water rates. In *Hare* v. *The Putney Overseers* (4), where the Court of Appeal held that, if the Metropolitan Board of Works had become occupiers of Putney Bridge, they were not beneficial occupiers, and therefore not rateable under the poor law, Brett, L.J., said he took the test of beneficial occupation to be as suggested in argument by Mellish, L.J., when at the bar, that there was no beneficial occupation where by law no benefit could possibly arise to the occupier, but if it was merely by his own volition that no benefit arose to an occupier there was potentially a beneficial occupation.

No doubt it appears that in *Chorlton-upon-Medlock* v. *The Chorlton Union* (7), certain public baths and laundries and board schools being rated at a merely nominal sum, on the ground that by statute no profit could be made out of them, it was held that they ought to have been assessed upon the basis of the rent which a tenant unrestricted as to user and charges would give for them. But a ground there taken was that, although there were restrictions upon the charges, no fetter was (in the view taken by the Court) placed upon the use of the land; and, whatever may be the value of that distinction, it cannot avail the respondents, for there clearly is a fetter upon the use of the land: besides which, reliance was there placed upon the fact of the property having a rateable value before it

(2) 45 Law J. Rep. M.C. 81; 46 ibid. 241; Law Rep. 2 Ex. D. 49.
(3) 31 W.R. 949.
(4) 50 Law J. Rep. M.C. 81; Law Rep. 7 Q.B. D. 223.
(5) 6 & 7 Will. 4. c. 96. s. 1.
(6) 39 J.P. 101; Law Rep. 2 Ex. D. 55*n*.
(7) 51 Law J. Rep. Q.B. 458; 47 Law Times Rep. 96.

was acquired by the public body whose rateability was in question; and in this case—at all events as to the schools which the appellants themselves erected—no such fact exists. *Jones* v. *The Mersey Docks Trustees* (8) is distinguishable, and the opinion which Blackburn, J., there delivered to the House of Lords for himself and four of the other five Judges present makes in favour of the appellants. Blackburn, J., said: "In order . . . that a valid rate may be imposed, it is essential that the occupation should be of value beyond what is required to maintain the property; for if the occupation be of so little value that the hypothetical tenant (under the Parochial Assessment Act) would either give no rent or a rent which, after deducting the average annual expense of the maintenance, would leave no overplus, there is nothing to rate; . . . . and if the words 'beneficial occupation' are to be understood as merely signifying that the occupation is of value, ... it is clear that a beneficial occupation is essential as the foundation of the rate. But it is equally clear that, if the phrase is" so "to be understood, . . . the trustees have a beneficial occupation; for they actually occupy land as docks, and, in virtue of that occupation, receive payments from the shipping using the docks, at present greatly in excess of what is necessary to maintain the docks. Hereafter the charges on shipping may be reduced so as greatly to diminish the revenue derived, . . . possibly . . . . to render it no greater than the sum requisite to maintain the docks; but whilst the dues . . . . are maintained at their present rate, it is clear that the hypothetical tenant would give for the occupancy of the docks, as at present enjoyed by the trustees, a rent greatly in excess of what would be necessary to maintain the docks in a state to command that rent." Thus that case differed materially from the present, where a contribution from the rates has always been necessary to meet the ordinary expenses of the schools.

[Lord Coleridge, C.J.—The Lord Chancellor (Lord Westbury) said: "On principle it is by no means necessary that occupation, to be rateable, should be beneficial to the occupiers. It is sufficient if the property be capable of yielding a clear rent . . . ." And Lord Cranworth spoke likewise of capacity for yielding profit, saying he agreed that "it was not meant to impose the duty of contributing to the relief of the poor on any one merely because he might be the occupier of a barren rock, neither yielding, nor capable of yielding, any profit from its occupation."]

There is in this case no capacity for yielding profit if the statutory directions are obeyed.

He referred also to *The Mersey Docks Trustees* v. *The Liverpool Overseers* (9), *The Queen* v. *The Metropolitan Board of Works* (10) and *The Metropolitan Board of Works* v. *West Ham* (11).

Jelf, Q.C., and *A. Young*, for the respondents, were not called upon.

Lord Coleridge, C.J.—Nothing could be better done (I do not speak sarcastically) than Mr. Anstie's argument. But it is in vain, I think, after the decision of the House of Lords in the case of *Jones* v. *The Mersey Docks Trustees* (8), to address to the Court arguments of this kind. The endeavour is to resuscitate a view which was there declared by the House of Lords to be wrong. What is the principle there laid down? The Lord Chancellor (Lord Westbury) said: "Independently of the decided cases, . . . it may be said that 'occupation,' to be rateable, must be of property yielding, or capable of yielding, a net annual value. . . . It is in this sense that I understand the words 'beneficial occupation' whenever it is said that, to support a rate, the occupation must be a beneficial one. . . . The only occupier exempt from the operation of the Act is the King, because he is not named in the statute; and the direct and immediate servants of the Crown, whose occupation is the occupation of the Crown itself, also come within the exemption. But this ground of exemption does not warrant many decisions which have held

(8) 11 H.L. Cas. 443; 35 Law J. Rep. M.C. 1.

(9) 43 Law J. Rep. M.C. 33; Law Rep. 9 Q.B. 84.

(10) 38 Law J. Rep. M.C. 24; Law Rep. 4 Q.B. 15.

(11) 40 Law J. Rep. M.C. 30; Law Rep. 6 Q.B. 193.

that property used for public purposes is not rateable." And Lord Westbury went on to attribute to certain observations and decisions of Lord Mansfield, and to language of Lord Kenyon when adopting a position, or supposed position, of Lord Mansfield's, the introduction of "the notion that, if valuable property be in the possession of trustees . . . . bound to apply the whole of the proceeds to public but not Government purposes, . . . they are not liable to be rated"; and, as to that notion, said: "There is nothing in the Act of Elizabeth or in the reason of the thing to warrant this conclusion. No exemption is thereby given to charity or to public purposes beyond that which is strictly involved in the position that the Crown is not bound by the Act." Lord Cranworth said: "The argument"—on behalf of the Mersey Docks trustees—"has been that, though they are occupiers, their occupation is not a beneficial one; and the statute, it was contended, contemplated only such an occupation as is beneficial to the occupier or to some other person or persons for whose behoof the occupier is occupying. If by *beneficial* occupation is meant any occupation of something valuable, something in its own nature *beneficial* to some one, I think it is fair to consider that word as impliedly included in the statute. It was not meant to impose the duty of contributing to the relief of the poor on any one merely because he might be the occupier of a barren rock, neither yielding, nor capable of yielding, any profit from its occupation. But I can discover nothing either in the words or in the spirit of the Act exempting from liability the occupier of valuable property merely because the profits of the occupation are not to be enjoyed by him or by any one on whose behoof he is occupying, but are to be devoted to the benefit of the public." And, after referring briefly to the course of the decisions on the subject, Lord Cranworth proceeded to say: "In these circumstances, thinking as I do that there is nothing in the statute of Elizabeth expressly or impliedly exempting from rateability the occupiers of valuable property merely because the benefit of the occupation is to go to the public, I think your Lordships ought . . . . to lay down the law as you think it ought to have been laid down if" there had been no decisions upon the subject. In the case before us we have, as the property rated, property capable of beneficial occupation, for the payment of rent by the appellants themselves proves that. And in what is said in *Jones* v. *The Mersey Docks Trustees* (8) as to the one ground of exemption, there is nothing to countenance exemption of this property.

It is said that subsequent cases have laid down the law in a way which shews that this property is not rateable. Those cases, however, must be read as not intending to depart from the decision of the House of Lords in the case of *Jones* v. *The Mersey Docks* (8). If they did depart from it they would be unauthoritative. I may add that in one at least of those cases the property in question would have been mere waste land but for the exercise of the powers of an Act of Parliament, and that Act itself prevented all possibility of profitable occupation of the land, by enacting that water supplied from the waterworks erected on the land, and giving it its value, should be delivered at the lowest price which would suffice for the maintenance of the waterworks.

The rule laid down by the House of Lords in *Jones* v. *The Mersey Docks Trustees* (8), I may perhaps observe, seems to me to have acted perfectly well.

I am of opinion that the order of Quarter Sessions must stand.

STEPHEN, J.—I am of the same opinion, and for the same reasons. I will only add that if the appellants were not rateable a considerable area of rateability would be taken out of the parish, to the increase of the burdens on the rest of the parish and the diminution of the burdens of the general community. The conclusion at which we have arrived seems fair in result.

MATHEW, J.—I also am of opinion that our judgment must be in favour of the respondents. We cannot yield to Mr. Anstie's argument without saying that the House of Lords were wrong in the case of *Jones* v. *The Mersey Docks* (8). The cases which he cited in support of his argument are distinguishable. They were cases where the property in question could have no

to bind themselves by stipulations which are not directly for their benefit; but they can only be enabled to do so by fresh legislation. It is clear that now this cannot be done. The magistrate was therefore quite right.

Appeal dismissed.

Solicitors—H. Tyrrell, agent for Llewellyn & Ackrill, Tunstall, for appellant; A. B. D. Sword, Hanley, for respondent.

[IN THE COURT OF APPEAL.]

1882. July 13. THE QUEEN *v.* WEIL.*

Extradition—Arrest without Warrant—Prisoner in Custody—"Apprehension"—Extradition Act, 1870 (33 & 34 *Vict.* c. 52), *s.* 8—*Jurisdiction—Court of Appeal—Criminal Matter—Judicature Act*, 1873 (36 & 37 *Vict.* c 66), *ss.* 19 *and* 47.

The word "apprehension" in section 8 *of the Extradition Act*, 1870, *includes "detention." A person who is already in custody may therefore be detained for an offence under the Act, although he was originally arrested without a warrant.*

Quære, *whether an appeal will lie to the Court of Appeal from the refusal of a Divisional Court to issue a writ of habeas corpus on the application of a person in custody for an alleged extradition crime.*

This was an appeal from a refusal by Lord Coleridge, C.J., and Field, J., to grant a writ of *habeas corpus*.

On the 25th of May, 1882, Jacob Weil was arrested in Queenstown Harbour on board the ship *Servia*, in which he had just arrived from America. He was arrested by an Irish police-constable without a warrant, on a charge of forgery committed in New York. The arrest was made upon information telegraphed from America that Weil had been indicted at New York for forgery. The prisoner was taken before the resident magistrate at Queenstown, who immediately issued a warrant directing the sub-inspector of Royal Irish Constabulary to lodge him in gaol. On the 28th of May the prisoner was brought up on remand, when evidence was taken against him, and on the same day the magistrate reported the arrest to the Home Secretary.

On the 31st of May a warrant was issued by the magistrate for the conveyance of the prisoner to London, and taking him before the chief magistrate at Bow Street. On the 2nd of June the prisoner was brought before the chief magistrate (Sir James Ingham). He was remanded several times, and on the last occasion to the 22nd of June. On the 19th of June the Home Secretary issued an order to the chief magistrate, stating that a requisition had been made by the American ambassador, under the Extradition Acts, 1870 and 1873, for the surrender of the prisoner, and ordering him to proceed under the Acts.

On the 22nd of June the prisoner was again brought up on remand, when his counsel objected that he was illegally detained in custody, as he had been arrested without any warrant. Sir James Ingham, however, acting on the order of the Home Secretary, issued a warrant (addressed in blank) for the prisoner's apprehension, and on the 29th of June a warrant for his committal, under which he was lodged in Clerkenwell Prison.

An application for a *habeas corpus* on his behalf was refused by the Queen's Bench Divisional Court, and the prisoner now appealed.

W. G. Harrison, Q.C., for the appellant, *ex parte*.—The proceedings were altogether irregular. There being no warrant, the original arrest was unlawful; and the prisoner being already in custody, the warrant issued by the Queenstown magistrate could not be a warrant for his "apprehension" within section 8 of the Extradition Act, 1870. He could not be apprehended unless he was first set at liberty.

[BRETT, L.J.—Does an appeal lie in a criminal matter like this? JESSEL, M.R., referred to sections 19 and 47 of the Judicature Act, 1873.]

* *Coram* Jessel, M.R.; Brett, L.J., and Cotton, L.J.

The Queen v. *Weil, App.*

This is not a criminal matter. An appeal will lie in such a case—*Dale's Case* (1).

[JESSEL, M.R.—We will reserve the point as to jurisdiction. We cannot determine it until we know more about the case.]

The warrant for committal issued by the chief magistrate was addressed in blank, whereas it should have been addressed to a particular constable by name.

JESSEL, M.R.—There will be a serious question to be considered at some time, if the case should ever arise, whether, having regard to the provisions of the Judicature Acts, the Court has jurisdiction to entertain an appeal from a Divisional Court in a case like the present. The question whether we have jurisdiction depends on a very careful consideration of various sections of the Acts, and it is far too serious and grave a matter for me to give an opinion upon it offhand. If it were necessary to decide it, I should take time to consider it, and I should require to hear further argument. For the purpose of deciding the present case, I will assume that we have the jurisdiction. But it does not appear to me that the only objection to the prisoner's committal which can be fairly argued is of such weight as to justify us in interfering by granting a *habeas corpus*. The question turns on the proper construction of section 8 of the Act of 1870. In the present case the applicant was accused of committing forgery in the United States. He was arrested on board a steamer at Queenstown Harbour by an Irish police-constable, without any warrant, and was brought before a police magistrate there, who then issued a warrant ordering his detention in prison, and after further enquiry he issued another warrant for taking the prisoner before the chief magistrate at Bow Street, and then he reported the arrest to the Secretary of State for the Home Department. The prisoner having been brought before Sir James Ingham, the chief magistrate, he directed the usual reference to the Secretary of State, and within the time limited by the Act he received a requisition from the Secretary of State requiring him to proceed in conformity with the Act. A warrant was then issued for the prisoner's apprehension, and afterwards an order was made for his committal. All the proceedings were strictly regular, with this exception, that the prisoner was originally arrested without any warrant: and the whole objection is this, that the Irish magistrate's warrant was not a warrant for the "apprehension" of the prisoner within the meaning of section 8 of the Act. It appears to me that this would be to give too narrow a meaning to the word "apprehension." The word, strictly construed, means the seizing or taking hold of a man, and literally and truly you can do that although he may be already in custody. It means the taking hold of him and detaining him with a view to his ultimate surrender. I am not inclined to limit the word "apprehension" to the taking hold of a man who is not already in custody. It would follow that if a man was already in lawful custody you could not take him at all under this Act: the word "apprehension" would not apply. You would be compelled to restore him to liberty before you could apprehend him. It appears to me that this would not be a rational mode of construing the Act. I think, therefore, that the whole of the proceedings were regular.

Another point suggested was this—that the evidence on which the Irish magistrate issued his warrant was not such as would have justified the issue of a warrant if the crime had been committed or the criminal convicted in Ireland. But all that the Act requires is that the evidence should be sufficient "in the opinion of the person issuing the warrant." That is a matter of judicial discretion. There must be some evidence, but very little will do, for it is merely for the purpose of detaining the man. It is very different from the evidence which is required under section 10 to justify the committal of the prisoner. There the evidence must be such as would, "according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused has been committed in England." There is nothing in the present case to shew that the evidence was not sufficient

(1) 50 Law J. Rep. Q.B. 234; Law Rep. 6 Q.B. D. 376.

in the opinion of the magistrate. Assuming, therefore, that we have jurisdiction, I think that in the present case we ought not to interfere.

BRETT, L.J.—I desire to give no opinion on the very important question whether there is any jurisdiction in this Court to consider whether in a case of this kind a writ of *habeas corpus* should or should not issue. What we are doing to-day must not be construed as a decision that we have any jurisdiction. But, assuming that we have jurisdiction, I think there is no ground for our exercising it in the present case. I doubt whether there has been any irregularity whatever in the proceedings. I doubt much whether a policeman is not justified in arresting a man without a warrant on reasonable grounds of suspicion of his having done that which would be a felony if committed in this country. But, assuming that the Irish policeman was wrong in making the arrest, the Irish magistrate issued a warrant that the prisoner should be detained in custody, and afterwards a second warrant that he should be taken before the chief magistrate at Bow Street. It seems to me that the Irish magistrate's first warrant was a warrant for the "apprehension" of the prisoner within the meaning of the Act. I cannot think that the Act ought to be construed in the way suggested. It is necessary that the magistrate should issue a warrant for the "apprehension" of the criminal; but if he is already in custody a warrant for his detention is a warrant for his "apprehension." But if it was necessary to do more, Sir James Ingham issued a warrant for the detention of the prisoner, and it seems to me that that was a warrant for his "apprehension" within the meaning of the Act. If he was already wrongfully in custody, and there was proper evidence to justify his apprehension, Sir James Ingham was justified in issuing a warrant for his detention. It is said that the warrant of committal was wrong, because it was not addressed to any particular policeman by name; but, in my opinion, when the warrant was handed to a particular policeman for execution, it was as good as if it had been addressed to him by name. I am inclined to think that there was no irregularity in the proceedings. If there was any, it was in the original arrest. But that is immaterial when the subsequent proceedings have been right.

COTTON, L.J.—I desire in no way to intimate an opinion whether we have or have not jurisdiction to entertain an appeal in such a case as the present. But, assuming that we have jurisdiction, I think no ground has been shewn for our interfering. I give no opinion on the point whether the original arrest was lawful, nor on the point whether, assuming that there was no lawful arrest before the prisoner was brought before Sir James Ingham, there was afterwards a valid apprehension. In my opinion the first warrant of the Irish magistrate was, within the meaning of the Act, a warrant for the "apprehension" of the prisoner. I am of opinion that, in substance, the requirements of the Act have been complied with.

Solicitor—W. D. Smyth.

1884. March 24. } HEAP *v.* THE BURNLEY UNION RURAL SANITARY AUTHORITY.

Public Health—Keeping Animals so as to be injurious to Health—By-law—Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *ss.* 44 *and* 276.

A by-law forbidding the keeping of swine within fifty feet of a dwelling-house, made in a rural sanitary district under the powers of section 44 *of the Public Health Act*, 1875, *allowing by-laws to be made "for the prevention of the keeping of animals so as to be injurious to health,"*—Held, *unreasonable and not enforceable.*

Case stated by Justices under 20 & 21 Vict. c. 43, upon a conviction of the appellant under a by-law made by the respondents as rural sanitary authority and allowed by the Local Government Board.

The by-law was as follows:—"The occupier of any premises shall not keep any swine or deposit any swine's dung

within the distance of fifty feet from any dwelling-house, or in such a situation or in such a manner as to pollute any water supplied for use, or used, or likely to be used, by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, or any water used, or likely to be used, in any dairy."

Swine were kept within the distance of fifty feet from the dwelling-house of the appellant; notice was duly given him to abate the nuisance, and he was summoned upon the information of the inspector of nuisances for so keeping the swine. It was objected on the appellant's behalf that so much of the by-law as forbade the keeping of swine within fifty feet of a dwelling-house was *ultra vires* and bad. The Justices convicted the appellant.

By section 44 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), it is enacted that "an urban authority may also make by-laws for the prevention of nuisances arising from snow, filth, dust, ashes and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health." The Burnley Union Rural Sanitary Authority obtained, under section 276, the powers of an urban authority.

Charles, Q.C. (*Lumley* with him), for the appellants, contended that the provision in the by-law forbidding the keeping of swine within fifty feet of a dwelling-house was unreasonable.

He referred to *The Wanstead Local Board of Health* v. *Wooster* (1), in which a by-law of an urban sanitary authority, forbidding the keeping of swine within one hundred feet of a dwelling-house, was upheld. That case is distinguishable, because the present by-law applied to a rural district.

R. H. Collins, Q.C., for the respondents.

LORD COLERIDGE, C.J.—I am of opinion that this conviction was wrong, and that the by-law was unreasonable. We cannot shut our eyes to facts which are everywhere obvious. In rural districts pigstyes are to be seen within fifty feet of dwelling-houses in all parts of the country, and no injury to health seems to follow. We are not overruling the case which decides that one hundred feet from a dwelling-house is not an unreasonable distance within which to forbid pigstyes in a town; but it does not follow that, because a hundred feet is not unreasonable in a town, half a hundred feet is reasonable in the country. It may not be easy to say where the line should be drawn; but to draw it at fifty feet is clearly too wide.

STEPHEN, J.—I am of the same opinion. I am not sure that our decision will be easily appreciated, because we do not give any test of reasonableness; but this by-law seems to me clearly unreasonable.

Decision reversed.

Solicitors—Bolton, Robbins, Busk & Co., agents for Creeke & Sandy, Burnley, for appellants; Shaw & Tremellen, agents for Artindale & Artindale, Burnley, for respondents.

(1) 38 J.P. 21

1884. March 21. } SOMERSET (*appellant*) *v.* HART (*respondent*).

Licensing Act, 1872 (35 & 36 *Vict. c.* 94), *s.* 17—*Suffering Gaming on Licensed Premises—Knowledge of Servant—Proof of Knowledge on part of Innkeeper—Mens Rea.*

The respondent, an innkeeper, was charged under 35 & 36 *Vict. c.* 94. *s.* 17 *with "suffering" gaming to be carried on on his premises. The gaming in question took place with the knowledge of the respondent's potman, who took no steps to prevent it. The Justices dismissed the information, holding that there was no evidence that the respondent knew that gaming was going on or that he had wilfully shut his eyes to what was taking place, and that knowledge of the potman was not such constructive knowledge by the respondent as would render him liable to a conviction:*—Held, *upon the above facts, that the Justices had acted rightly in dismissing the information.*

Case stated under 20 & 21 Vict. c. 43.

At a Court of Summary Jurisdiction held at Chelmsford on the 23rd of November, 1883, the respondent was charged by the appellant, a superintendent of police,

for that he, the respondent, being a licensed person, did suffer gaming to be carried on on his premises at Chelmsford on the 14th of September, 1883.

It appeared from the evidence that the respondent kept an alehouse which was much frequented on market days by farmers, dealers, hawkers, &c., who are accommodated in several rooms, large numbers of them being supplied with food as well as with drink.

On the day in question—a market day, about three o'clock in the afternoon, the busiest part of the day—a number of persons, stated by the witnesses to be from fifteen to twenty, were in one of the rooms, and they were waited upon and their wants supplied by a man named Arthur Smith, a potman in the service of the respondent, who took the customers' orders, and procured from other parts of the premises the food and drink ordered, which he carried into the room. Two men named Twinn and Everitt were there, and they commenced gambling with a mug and three nuts, first for beer and then for money. Another man named Smee was invited to bet 5*s*. to 4*s*. upon the question of the number of nuts under the mug, but he declined to do so. He was then induced to take his watch from his pocket, but would not let it go from his hand. Twinn and Everitt each placed a watch on the table, and, after shuffling the mug, declared Smee and Everitt had lost their watches, and seized Smee's and forcibly took it from him. He sent for the police, and Twinn and Everitt decamped. They were, however, tried and convicted at the Michaelmas Quarter Sessions for larceny of the watch (which was never recovered), they having obtained it by a trick.

The fact that divers acts of gambling took place was clearly proved by several witnesses, Smith the potman passing twice into and out of the room during the time in attending to the wants of the customers; and Smith, who was a witness before us, acknowledged that, although he saw nothing of the gambling for beer and money, yet he did see the transaction in connection with the watch, and heard a bet made of 5*s*. to 4*s*. before the shuffling of the mug took place upon which Smee and Everitt were declared to have lost their watches. It did not appear that he took any steps to prevent the gaming, although he had knowledge of what was going on.

Evidence was given that the respondent was engaged in the bar and elsewhere attending to his customers whilst the gaming transactions were going on, but there was no evidence that he had any actual knowledge of the gaming, or that the potman ever communicated with him in any way upon the subject, or that he was ever in the room. None of these facts were disputed on behalf of the respondent, it being admitted that the gaming took place, that Smith was aware of it, that he did nothing to prevent it by reporting what was going on to the respondent or otherwise; but it was contended that, as there was no evidence that the respondent knew or was informed that gambling was going on or had taken place, he could not be convicted. We allowed the objection, finding no evidence that the respondent had himself wilfully shut his eyes to what was going on, and holding that suffering by Smith was not suffering by the respondent, and that knowledge by Smith was not such constructive knowledge by the respondent as would render him liable to a conviction.

If the Court were of opinion that the decision was right, then the dismissal of the information was to stand; otherwise the case was to be remitted to the Justices with the opinion of the Court thereon (1).

Tindal Atkinson, for the appellant.—The Justices were wrong in dismissing the information. Knowledge on the part of the potman is constructive knowledge of the master—*Mullins* v. *Collins* (2). In *Crabtree* v. *Hole* (3) an alehouse-keeper was held to have been rightly convicted under similar circumstances to these.

[CAVE, J.—That case decides that the Justices *may* convict, not that they *must*.]

(1) By 35 & 36 Vict. c. 94 it is enacted "that, if any licensed person suffers any gaming or unlawful game to be carried on on his premises, ... he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds."

(2) 43 Law J. Rep. M.C. 67; Law Rep. 9 Q.B. 292.

(3) 43 J.P. 799.

Somerset v. *Hart.*

In *Redgate* v. *Haynes* (4) an appellant was held responsible for the conduct of the hall-porter who was left in charge of the hotel.

[LORD COLERIDGE, C.J.—There is no evidence that the potman was in charge of the respondent's premises.]

He cited also *Bosley* v. *Davies* (5).

The respondent did not appear.

Ogle appeared for the Justices, but was not called upon.

LORD COLERIDGE, C.J.—I am of opinion that the Justices were quite right in dismissing this information. The only case which has created any difficulty in my mind is *Mullins* v. *Collins* (2), in which Mr. Justice Archibald says he did not intend to interfere with the principle that, before a person can be criminally convicted, he must be shewn to have a *mens rea*. I confess I fail to see how a person can be said to have a *mens rea* if he have no *mens*. The decision in that case was in affirmance of a conviction, the Justices having come to the conclusion that the appellant had been guilty of an offence within the meaning of section 16 of the Act of 1872. There the appellant had called no witnesses, but had relied on a point of law, and the Justices may well have come to the conclusion that, inasmuch as he had no *affirmative* evidence, they were justified in convicting. I notice, also, that it is stated in the Case that it was left in doubt whether the female who supplied the drink was or was not the appellant's wife; if she was, she may have been in a position clothed with authority. The case therefore, as it seems to me, is fairly distinguishable on more than one ground, and does not govern the present case. In the present case all the facts were before the Justices at Chelmsford, and were heard at considerable length, and the Justices found that there was no evidence that the respondent was aware of what was going on or had wilfully shut his eyes. The respondent was therefore acquitted of all moral guilt, and I think the Justices acted quite rightly in refusing to convict.

The other cases that were cited during the argument create no difficulty, as the Judges expressly say that there must be something in the nature of connivance to make a licensed victualler responsible criminally; they do not lay it down that, in the absence of any connivance, the publican must be convicted. I quite agree that the Act must be liberally construed so as to effectively maintain public order, and that actual knowledge is not necessary; but at the same time something like connivance must be shewn—that is to say, that the person charged might have known what was going on if he chose.

CAVE, J.—I am quite of the same opinion. The Justices have acted quite rightly, under the circumstances, in refusing to convict.

Appeal dismissed.

Solicitors—H. Gibson, for appellant; Duffield & Bruty, for the Justices.

(4) 45 Law J. Rep. M.C. 65; Law Rep. 1 Q.B. D. 89.

(5) 45 Law J. Rep. M.C. 27; Law Rep. 1 Q.B. D. 84

1884. March 31. } THE MIDLAND RAILWAY COMPANY *v.* FREEMAN.

Contagious Diseases (Animals) Act—41 & 42 *Vict. c.* 74—*Prohibited District*—"*Causing the Movement*" *of Animals*—*Railway Company*—*Order in Council*—*Regulation of Local Authority.*

A railway company carrying animals on their road to a place within a district prohibited under the Contagious Diseases Animals Act, with knowledge of their destination, are guilty of "causing the movement" of the animals in contravention of the Order in Council, although they do not carry the animals further than a point outside the district and do no act within it.

Case stated upon a conviction of the appellants by Justices of the county of Dorset, for that they, on the 16th of December, 1883, at the parish of Gillingham, in the said county, unlawfully caused to

be moved into the district of the local authority, under the Contagious Diseases (Animals) Act, 1878, for the said county, one hundred pigs, not being accompanied by the declaration required by the regulations of such authority.

On the 16th of December, 1883, one hundred pigs were unloaded at the Gillingham station on the railway of the South-Western Railway Company, from trucks belonging to the appellant company. On the trucks were two invoices, one of which was in respect of fifty pigs from Cork to Gillingham, and the other from Bristol to Gillingham. The trucks had travelled by the appellants' railway from Bristol to Bath, thence by the Somerset and Dorset line (which is worked jointly by the appellant company and the London and South-Western Railway Company) to Templecombe, and thence to Gillingham by the London and South-Western Railway Company. The trucks entered the district subject to the jurisdiction of the Justices at a point between Templecombe and Gillingham.

By an Order in Council of the 24th of August, 1883, made under the Contagious Diseases (Animals) Act, 1878, it is provided that "any local authority in England, Wales or Scotland may, with a view of preventing the introduction of foot and mouth disease, make from time to time regulations for prohibiting or regulating the movement by land or by water of animals into their district from the district of any other local authority, provided, among other things, that any regulation made shall not restrict the movement of animals by railway through the district of that local authority."

On the 15th of September the local authority of the county of Dorset made a regulation prohibiting the movement of animals into the county of Dorset without a special licence.

The Order in Council further provided that "if any animal is moved in contravention of this order, or of a regulation of a local authority thereunder, the owner of the animal, and the person for the time being in charge thereof, and the person causing, directing or permitting the movement, and the person or company moving or conveying the animal, and the owner, and the charterer, and the master of the vessel in which it is moved, and the consignee or other person receiving or keeping it, knowing it to have been moved in contravention as aforesaid, shall be guilty of an offence against the Act of 1878."

W. J. Noble, for the appellants.—The offence is not made out. The company did not move the pigs into the Dorset district, but from Bristol to Bath. The South-Western Railway Company moved them to the Dorset district.

Pitt-Lewis, for the respondent.

DAY, J.—I am of opinion that the decision of the Justices must be affirmed. The company were concerned in the carriage of these pigs, with knowledge that they were going to Gillingham. They carried them from Bristol to Bath for the purpose of their going to Gillingham. They were therefore "causing the movement of or conveying" the animals. The acts were clearly done within the jurisdiction of the Justices, because they were done with a view to getting the pigs where it was unlawful they should be.

SMITH, J.—I am of the same opinion. The pigs were going from Cork in Ireland to Gillingham in Dorsetshire. The tickets covered the pigs. They were to go from Bristol to Gillingham by the appellants' line and the line of the London and South-Western Railway Company. The Order in Council is as large as possible, and intended to prevent the removal of any animal whatever. Section 46, sub-section 2, of the Summary Jurisdiction Act, 1879, provides that where the offence is begun in one jurisdiction and ended in another, either Justices have jurisdiction.

Appeal dismissed.

Solicitors—Beale, Marigold, Beale & Groves, for appellants; R. S. Freame, Shaftesbury, for respondent.

1884. March 24. GARRETT *v.* THE LICENSING JUSTICES OF ST. MARYLEBONE.

Licensing Acts—Mortgagee—Power of Attorney—Renewal without Concurrence of Licence-holder—Appeal—Person aggrieved —9 Geo. 4. c. 61. s. 27.

The mortgagee of licensed premises, with a covenant by the mortgagor and licence-holder to assign the licence, and an irrevocable appointment of the mortgagee as the mortgagor's attorney to sign such documents and do such acts as the mortgagee might consider necessary, has the same title to the renewal, in the name of the licence-holder, of a licence for the sale of intoxicating liquors as the licence-holder, notwithstanding that the licence-holder objects to the renewal of the licence; and, if the Justices refuse the renewal, the mortgagee may appeal as a "person aggrieved."

Case stated at the Middlesex Quarter Sessions for the opinion of the Court in an appeal from the decision of the licensing Justices of St. Marylebone Division declining to renew a licence to John Swannell to sell beer and wine to be drunk on the premises No. 2 Oxford Street.

The beer licence was in force on the 1st of May, 1869, and had been duly renewed down to the time of the application. The wine licence was granted in 1871.

By indentures bearing date the 18th of July, 1876, and the 15th of August, 1881, Swannell mortgaged his lease of, and interest in, the licensed premises to the appellants, Garrett & Co., brewers, together with the benefit of the licences, for the residue of his term of fifty-six years, and covenanted, on non-payment of the moneys, to assign the licences and to do all other acts necessary to vest them in the mortgagees, who were thereby irrevocably appointed the true and lawful attorneys of Swannell for valuable consideration, for him and in his name to sign all such documents and to give all such notices and consents, and to do all such acts as they might consider necessary, and particularly to procure the transfer of the licences relating to the premises. The deeds contained a power of sale, at any time after default, of the premises, together with the benefit of the licences.

In November, 1882, Swannell owed 2,287*l.* to Garrett & Co., who, in default of payment on demand, put a man into the house to protect their interests; but Swannell remained the occupier of the premises, and, before the adjourned meeting of the Justices, on this man quitting the house, Swannell declined to readmit him.

Swannell duly made a written application for the renewal of his licence at the general annual meeting. He did not attend, and his application was adjourned; notice being given him to attend, and that the renewal was objected to on the ground, among others, that he was not *bona fide* in occupation of the premises.

On the 10th of March, to which day the annual meeting had been adjourned, Swannell was represented by his counsel, and the appellants, Garrett & Co., were represented by their counsel. The latter applied for the renewal of the licence to Swannell. Controversy arose between counsel, whereupon Swannell's counsel said that rather than the mortgagees should have any hold over the licence Swannell preferred that the licence should be refused. Except the statement on oath by Swannell that he was in occupation of the premises, and that there were no complaints, no evidence on oath was given. The Justices refused to renew the licence.

Two notices of appeal to the Quarter Sessions were given, one signed by the solicitors of the appellants on their behalf, and the other signed by the same solicitors on their behalf and on Swannell's behalf.

At the hearing of the appeal, Swannell's counsel stated that Swannell was no party to the appeal, and did not apply for the licence, and objected to its being renewed; and Swannell, on being examined on oath, said that he did not wish to have the licence. Swannell also gave the same evidence as before the Justices as to his occupation of the premises. The Court of Quarter Sessions decided that they could not legally grant the licence, and asked the opinion of the Court whether the appellants, Garrett & Co., had a right to appeal; and, secondly, whether the Court

of Quarter Sessions were bound to grant the renewal.

Finlay, Q.C. (*Tickell* with him).—Under section 19 of the Wine and Beerhouse Act, 1869, the Justices were bound to renew the licence. The only objection taken under that section was that Swannell was not the real resident holder and occupier of the premises, and the evidence on this head was all one way, and the case finds that he was the occupier. The mortgagees, as the irrevocable attorneys of the licence-holder, had the right to continue the application, and to appeal, in spite of the withdrawal of the licence-holder. The mortgagees were "aggrieved" because their security was reduced in value.

Mead (*Goodrich* with him).—The mortgagees were not "persons aggrieved," as they were only indirectly aggrieved, and not "immediately aggrieved"—*The Queen* v. *The Middlesex Justices* (1). The mortgagees have mistaken their remedy. They ought to have asked for a transfer under section 14 of the Licensing Act, 1828 (9 Geo. 4. c. 61), as upon the holder neglecting or refusing to apply for a renewal. A licence to sell intoxicating liquors cannot be granted to a man against his will. His premises are subject to a right of visitation. There is a special police law in regard to him, and he might be indictable for not selling liquors to travellers.

Lord Coleridge, C.J.—I am of opinion that our judgment must be for the appellants. The arguments addressed to us are well worthy of attention, and I do not say that the matter is without difficulty, but I think, on the whole, that the decision of the Quarter Sessions must be reversed. The first question is, were the mortgagees persons aggrieved. I am clearly of opinion that they were. Their interest in the renewal of the licence to the premises was much greater than the tenant's. They had advanced 3,000*l.*, and the value of the premises on which it had been advanced was very much affected by the renewal or refusal of the licence. The first question left to us must therefore be answered in the affirmative. The mortgagees are entitled to appeal. The second question is whether the appellants had a right to have the licence renewed in the name of Swannell without his concurrence. The appellants are the owners of the premises and the landlords of Swannell. They have advanced the money; he is carrying on the business as their agent, and they have been constituted irrevocably his attorneys, "to sign all documents, and to do all such acts as they might consider necessary." They were therefore clothed with full authority to use his name. Swannell does not, as he need not under the Act of 1874, attend personally, as no notice of objection was given to him. It is, however, the practice of these Sessions to adjourn the cases of all persons who do not attend. Between the meetings formal notice to attend was given to him. At the adjourned meeting the mortgagees appeared by counsel, and a discussion took place. Swannell was annoyed by the control of his house assumed by the mortgagees. In the course of the discussion he said that he would rather have no licence at all. Thereupon the Magistrates refused to grant the licence, and the mortgagees appealed. They came before the Court of Quarter Sessions, and on that occasion Swannell appeared for the purpose of saying he did not appeal, and wished the appeal to be dismissed. But the Magistrates had before them the appeal of the mortgagees as attorneys for Swannell in virtue of the irrevocable power of attorney. It was not argued that as between Swannell and the mortgagees the power of attorney was not irrevocable. The mortgagees had the right to appeal and ask for the renewal in Swannell's name, although for their own interests. It appears to me, that consideration ought to have concluded the matter. Into the quarrels between Swannell and his mortgagees the Magistrates had no right to enquire: it was enough that a person was before them with a right to have the licence renewed. It is not suggested that the licence could have been refused on the grounds specified in the Act of Parliament allowing a refusal. We are, I think, bound to treat Swannell as having made the application in his name. The Magis-

(1) 3 B. & Ad. 938.

trates came to a wrong conclusion in point of law, and judgment must be for the appellants.

STEPHEN, J.—I am of the same opinion. The mortgagees were parties aggrieved. In the words of the case cited, they were "immediately aggrieved." Their interests were immediately affected. They were acting under the deed as irrevocably appointed attorneys of the licence-holder. It is not obvious that there should be an obligation to grant a licence to a man who said that he would rather not have it, and I do not wonder that the Magistrates came to an opposite conclusion; but I think they were wrong. What will happen in the future must be settled between the mortgagees and Swannell, as they may be advised; but at the licensing meeting, as soon as the mortgagees shewed a clear title to represent Swannell, the licence ought to have been granted.

Appeal allowed.

Solicitors—Routh, Stacey & Castle, for appellants; Clarkson, Greenwell & Wyles, for respondents.

[CROWN CASE RESERVED.]

1884. March 1. } THE QUEEN *v.* BRITTLETON AND BATE.*

Evidence—Husband and Wife—Larceny from Husband by Wife—Admissibility of Evidence by Husband—Married Women's Property Act, 1882 (45 *&* 46 *Vict. c.* 75), *ss.* 12 *and* 16.

Upon the trial of a married woman for stealing her husband's goods, the husband was called as a witness against her:—Held (STEPHEN, J., *dubitante*), *that, notwithstanding the Married Women's Property Act*, 1882, *the husband was not a competent witness.*

Case reserved by the Chairman of the Quarter Sessions for the county of Lancaster.

The prisoners were tried under one indictment, charging them with stealing certain wearing apparel, household goods and money, the property of Thomas James Brittleton. The indictment also contained a count for receiving.

Thomas James Brittleton was called and sworn as a witness for the prosecution, and stated in evidence that the prisoner Maria Jane Brittleton was married to him on the 3rd of July, 1880. It was then objected by counsel who, at my request, appeared for the prisoners that Thomas James Brittleton was an incompetent witness against the prisoner Maria Jane Brittleton, on the ground that section 16 of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75) (1), did not directly render the evidence of a husband admissible against his wife in the cases in which she was subjected to criminal proceedings by the same section, and that the words "in like manner" did not operate to make the husband a competent witness against his wife.

Without expressing any opinion as to the validity of the objection, I decided to admit the evidence, in order that the point might be reserved for the consideration of the Court of Criminal Appeal.

The evidence of Thomas James Brittleton was then admitted, and the case proved was, in substance, that the prisoner Maria Jane Brittleton and the prisoner George Bate together left the house of the witness Thomas James Brittleton on the 29th of December, 1882, taking with

* *Coram* Lord Coleridge, C.J.; Hawkins, J.; Lopes, J.; Stephen, J., and Mathew, J.

(1) By the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12, it is enacted that "every woman shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*. . . . In any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding." And, by section 16, that "a wife doing any act with respect to any property of her husband, which if done by the husband with respect to property of the wife would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband."

them the property and money mentioned in the indictment.

I left the case to the jury, directing them that if they were satisfied that the prisoners feloniously took and carried away the property mentioned in the indictment they were both guilty of larceny.

The jury convicted both prisoners of larceny, and the Court sentenced each of them to nine months' imprisonment with hard labour.

The questions for the consideration of the Court are :—

1. Was the evidence of Thomas James Brittleton admissible against his wife, the prisoner Maria Jane Brittleton.

2. If the evidence of Thomas James Brittleton was improperly admitted as against his wife, can the conviction of the prisoner George Bate be supported—the two prisoners being jointly indicted.

If the first question be answered in the negative, the conviction of the prisoner Maria Jane Brittleton is to be quashed.

If the second question be also answered in the negative, the conviction of the prisoner George Bate is also to be quashed.

No counsel appeared.

Lord Coleridge, C.J.—I should have been glad in this case to have had the assistance of the argument of counsel, inasmuch as the question raised depends upon the meaning to be given to a statute which cannot be said to be absolutely clear. It is a question arising upon the Married Women's Property Act, 1882, ss. 12 and 16. The wife was indicted with another person for stealing her husband's property, and the question was whether, under such circumstances, her husband was a competent witness against her.

The 12th section enacts that "every woman . . . shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained), the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property as if such property belonged to her as a *feme sole*; . . . in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding." The primary object of the section is the protection and security of the separate property of the wife; and the section must mean that where there is an indictment with regard to the wife's separate property, either husband or wife are competent to give evidence. It is difficult to see how this section could apply to the case where the husband is indicted, because in law, at present, he would certainly be incompetent to give evidence. This section seems, however, clearly to shew that a wife could give evidence against her husband if she indicted him for stealing her separate property; and the question then arises whether section 16 makes the husband able to give evidence in the converse case. The section does not expressly say so. It only enacts that "a wife doing any act with respect to any property of her husband, which if done by the husband with respect to property of the wife would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband." I do not by any means say that the matter is free from doubt. I think it best to adhere to the rule by which we construe the words of Acts of Parliament to mean that which in their natural sense they would be construed to mean, and not to import meanings of our own or words of our own into Acts of Parliament. If Parliament had meant to say that in such a case the husband should be a receivable witness against his wife, it would have been easy to say so. But they have not said so, and have used words which *prima facie* are inconsistent with any such view. Section 16 does not give him this right, unless by reference to section 12, while section 12 is entirely confined to the protection of the separate property of the wife. It appears to me, therefore, that this evidence was not receivable, and that the conviction against both prisoners ought to be quashed.

Hawkins, J.—I am of the same opinion. I think that if the Legislature had intended the husband to be an admissible

The Queen v. *Brittleton, C.C.R.*

witness against his wife, it would have expressed itself in clear and unmistakable terms; but it has not done so. There is a second question here, whether the fact of the woman's husband giving evidence will vitiate the conviction as against the person jointly indicted with her. I am clearly of opinion that it will. The cases of *The King* v. *Smith* (2) and *The Queen* v. *Thompson* (3) shew conclusively that the conviction cannot stand.

LOPES, J.—I am of the same opinion. I think that if the Legislature had intended to make so great an alteration in the law, the Legislature would have expressed itself in unequivocal terms, which it has not done.

STEPHEN, J.—I cannot take quite the same view as the rest of the Court, but at the same time my opinion upon the matter is not so decided as to induce me formally to dissent and so cause the case to be argued before the full bench of Judges. Had I been sitting alone I should have been inclined to consider the meaning of section 12 to be that husband and wife are competent to give evidence against each other, subject to the general rules of evidence, one of which is, that the party indicted cannot give evidence at all. It is not denied that under this section the wife can give evidence against her husband if he steals her separate property, and it seems somewhat remarkable that the husband should not be able to give evidence against his wife should she steal his goods.

Then I come to section 16, and that says that a wife shall be liable to be prosecuted if she does anything to her husband's property which would render her husband liable to a prosecution if done by him with regard to her separate property. This I should have been disposed to say meant that if the wife is prosecuted she is to stand in the same relation to her husband as the husband to her under section 12. But I admit that such a view goes somewhat beyond the precise explicit meaning of the words of the statute, and I therefore do not wish to insist upon my own view and formally differ from the rest of the Court.

(2) 1 Moo. C. 289.
(3) Law Rep. 1 C.C.R. 377.

In this particular case there is an additional reason why I take this course. The husband and wife were living together when, or immediately before, the offence was committed, and I do not feel by any means sure that the wife was here doing an act which if done by the husband against the wife's separate property would have rendered him liable to criminal proceedings, having regard to the proviso in section 12, "that no criminal proceedings shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her."

MATHEW, J.—I agree with the judgment of the Lord Chief Justice. I think that any difficulty arising from the ambiguity of the words used by the Legislature is removed by reference to the object of the Act, which was the protection of property of the wife. The present case is not one which was in the contemplation of the Legislature.

Conviction quashed.

1883. Dec. 17. } THE QUEEN *v.* MANNING AND ANOTHER.

Conspiracy — Indictment against two Defendants—Conviction of One Defendant only — Practice — Misdirection — Setting aside Verdict.

Upon an indictment for conspiracy, where two defendants are indicted and are tried together, either both must be convicted or both must be acquitted.

This was a rule on behalf of the defendant Manning, calling on the prosecutor to shew cause why the verdict obtained for the Crown at the Winchester Summer Assizes, 1883, should not be set aside, and a new trial had on the ground of misdirection by Lord Coleridge, C.J., in directing the jury that, on the indictment against the defendant and another person for conspiracy together, they could find one defendant guilty and acquit the other.

The indictment charged the defendants

The Queen v. *Manning.*

Manning and Hannam with conspiring together (but not with any person unknown) to defraud the prosecutor by obtaining stock at sales by auction, and paying for the same with worthless cheques, and was tried before Lord Coleridge and a special jury, the case having been removed by *certiorari* and ordered to be tried on the civil side. Lord Coleridge, in summing up, told the jury that on the indictment before them they might, if they pleased, find one defendant guilty and the other defendant not guilty. The jury found the defendant Manning guilty, but as to the other defendant they disagreed, and were discharged without giving a verdict.

C. W. Mathews and *B. Coleridge* shewed cause.—The defendant is not at present in a position to make this application, inasmuch as no verdict has been returned against Hannam, who may upon the second trial be convicted. Moreover, there was no misdirection. There may well be abundant evidence to convict one of two defendants which is not available against the other of them—for instance, a confession. *Robinson* v. *Robinson and Lane* (1) is an authority to shew that this principle is recognised in the Divorce Courts. In *The King* v. *Kinnersly* (2) it was expressly decided that if two persons be indicted for a conspiracy, and one only of them appear and take his trial, he may be found guilty, though the other defendant be absent and has not pleaded; and this although the other conspirator named in the indictment was dead before the indictment was preferred, or after pleading not guilty—see also *The King* v. *Nichols* (3), *The Queen* v. *Kenrick* (4) and *The Queen* v. *Ahearne* (5). In *The King* v. *Cooke* (6) it was held that judgment might be pronounced upon a defendant that had been found guilty before the trial of the other defendant.

[Stephen, J.—In that case Littledale, J., said, "If the other defendant shall hereafter be acquitted, perhaps this judgment may be reversed."]

No doubt; but on that *dictum* Mr. Greaves has the following note in *Russell on Crimes* (7): "*Sed quære*, for such acquittal would not necessarily shew that the verdict of guilty on the former trial was wrong, as witnesses might be dead, or absent, who were examined on the former trial; or the one defendant might have been convicted on his own confession, which would not be admissible against the other defendant." See also the judgment of Erle, J., in *The Queen* v. *Thompson* (8).

A. Charles, Q.C., and *Warry*, for the defendant, in support of the rule.—The learned Judge's direction was wrong. All the counts charge the defendants with agreeing together; there is no count for conspiracy with a person unknown. In *Hawkins' P.C.*, c. 72. s. 8, the rule is stated thus: "If all the defendants who are prosecuted for a conspiracy be acquitted but one, and the conspiracy be not stated as having been had with persons unknown, the acquittal of the rest is the acquittal of the one also." In *The King* v. *Cooke* (6) there was no repugnancy on the record, because the other defendant had not pleaded; and the remark of Littledale, J., greatly favours the defendant's contention. In *O'Connell* v. *The Queen* (9) it was decided that it is not competent, upon an indictment against several persons for conspiracy, to find a verdict which implies that some are guilty of one conspiracy and some of another. The decision of the majority of the Court in *The Queen* v. *Thompson* (8) is also in accordance with the rule laid down in *The King* v. *Cooke* (6) and *O'Connell* v. *The Queen* (9).

They also cited *The King* v. *Sudbury* (10).

Mathew, J.—I regret that I am driven to the conclusion that there must be a new trial, because there can be no doubt that looking at the matter from a common-sense view this verdict ought to stand. I

(1) 1 Sw. & Tr. 362; 29 Law J. Rep. P., M. & A. 178.
(2) 1 Str. 193.
(3) 2 Str. 1227; 13 East, 412*n*.
(4) 5 Q.B. Rep. 49; 12 Law J. Rep. M.C. 135.
(5) 6 Cox, 6.
(6) 5 B. & C. 538.
(7) Vol. 3, 4th ed., p. 146, *note* u.
(8) 16 Q.B. Rep. 832; 20 Law J. Rep. M.C. 183.
(9) 11 Cl. & F. 155, at p. 237.
(10) 12 Mod. Rep. Cas. 262.

think, however, that the rule of law is imperative that where two persons are tried on a charge of conspiracy it is not competent for the jury to convict one and to acquit the other. On such a charge the issue is whether both are guilty; and if the jury are not satisfied as to the guilt of either, both must be acquitted. In *The King* v. *Cooke* (6) it is very obvious that Chief Justice Abbot and the other Judges would not have made the remarks they did unless they had assumed the existence of this rule. And in *The Queen* v. *Thompson* (8) all the Judges appear to have been of opinion that the rule existed. There is in addition a passage in the judgment of *Robinson* v. *Robinson and Lane* (1) in which this rule of law is treated as being perfectly clear; and this judgment is further corroborated by that of the House of Lords in *O'Connell* v. *The Queen* (9). I think therefore that there must be a new trial.

STEPHEN, J.—I have reluctantly arrived at the same conclusion, on the authority of *O'Connell* v. *The Queen* (9). With reference to the cases of *The King* v. *Cooke* (6) and *The Queen* v. *Thompson* (8) I confess I am not so pressed as my brother Mathew seems to be; each of those cases, as it seems to me, left the present point open, and the learned Judges were then speaking with reference to the usual state of things, and not as to matters not then before them. The passage in *Robinson* v. *Robinson and Lane* (1) which deals with the criminal law was a mere *dictum*. I confess I should have attached great weight to and regarded favourably Mr. Mathews's contention had it not been for the judgment in *O'Connell* v. *The Queen* (9). But I see no way of getting over that authority, and accordingly I feel bound to hold that the direction cannot be supported.

LORD COLERIDGE, C.J.—I am of opinion that I misdirected the jury. The cases of *The King* v. *Cooke* (6) and *The Queen* v. *Thompson* (9) were not before me at the trial, or I should have attached more weight to them than my brother Stephen seems to do. I confess it seemed to me at the time of the trial difficult to distinguish in principle between the rules applicable to a case like the present and those in the Divorce Court, where a practice prevails which is at first sight difficult to understand until the fact is recognised that by our rules of evidence what may be evidence against one may not be evidence against another. It then seems to follow logically that there may be sufficient evidence to convict one person and insufficient to convict another. I am by no means prepared to say that if this matter had been *res integra* I should not have adhered to my view at the trial and left my judgment to be reviewed by the Court of Appeal; but this being a criminal case there can be no appeal from our judgment, and I therefore feel bound by what I understand to be an established rule of practice. The old cases are stated shortly and without much particularity, and lay down that where two persons are charged with conspiracy and are both tried together, in such a case it is an inflexible rule that both must be convicted, or both must be acquitted. The same rule must have been present to the minds of the Judges who decided the cases of *The King* v. *Cooke* (6) and *The Queen* v. *Thompson* (8). It is true that neither of those cases decides this exact point, because the point was not the same, the details were not the same, the pleadings were not the same, and the verdict was not the same. But nevertheless, in 1826, the Court of King's Bench, presided over by Mr. Justice Littledale, Mr. Justice Baily, Mr. Justice Holroyd and Lord Tenterden, certainly assumed, as a principle underlying the whole matter, that such a direction as I gave would not be right. *The Queen* v. *Thompson* (8) is to the same effect, and although Mr. Justice Erle differed from the judgment of the other Judges, he differed on some point of pleading, and not on the principle the existence of which was assumed by the others—namely, that on a joint indictment for conspiracy, where one only is convicted the conviction cannot stand. Then there is the case of *O'Connell* v. *The Queen* (9), in which the Judges all assume this point as a rule of practice, though there was a difference of opinion upon other points. The principle which underlies that decision is, that where there are one or more persons charged with conspiracy, the count is a single and complete count and cannot be separated. I directed

the jury contrary to that principle, and there must therefore be a new trial. I desire to add that Order XXXIX. rule 2 is not applicable to criminal proceedings, and it is on that ground only that I have consented to take any part in the argument and judgment.

Rule absolute for a new trial.

Solicitors—Sole, Turner & Knight, agents for H. R. Hooper, Newport, Isle of Wight, and E. Burnett, Dorchester, for the prosecution; Turner, Son & Norton, agents for F. P. Henry, Newport, Isle of Wight, for defendant.

[IN THE COURT OF APPEAL.]

1884. May 2. *In re* THE GUARDIANS OF THE PARISH OF MARYLEBONE *v.* THE GUARDIANS OF THE WYCOMBE UNION.*

Poor Law — Settlement of Illegitimate Children—Derivative Settlement of Mother —Divided Parishes and Poor Law Amendment Act, 1876 (39 *&* 40 *Vict. c.* 61), *s.* 35.

An order was made for the removal to the place of their birth of two illegitimate children under sixteen whose mother had never acquired any settlement for herself :— Held (*affirming the judgment of the Queen's Bench Division*), *that the order was right : for that under* 39 *&* 40 *Vict. c.* 61. *s.* 35 *the settlement of the mother could only be enquired into in order to ascertain whether it was a derivative settlement or not ; and that on its appearing that it was a derivative settlement, it must be rejected, and the children be deemed to be settled in the place of their birth.*

Appeal by the guardians of St. Marylebone Union from the judgment of the Queen's Bench Division.

The case is reported *ante*, p. 12.

A Special Case was stated by way of appeal from an order of Quarter Sessions directing the removal of two pauper children, the illegitimate children of Emily Beale, from the Union of Wycombe to the parish of Marylebone.

Emily Beale, the mother of these children, was born in 1857, in the parish of Shoreditch, and had never done anything to acquire any other settlement for herself; but her father, while she was a child under sixteen, acquired a settlement in Bermondsey. The two children were born in Marylebone in 1877 and 1879 respectively; they were deserted by their mother in the union of Wycombe, and had become chargeable to that union, and an order had been made directing their removal to Marylebone, the place of their birth.

The Queen's Bench Division confirmed the order of Quarter Sessions.

The guardians of Marylebone appealed.

Poland and *J. V. FitzGerald*, for the appellants.—The contention of the appellants is that these illegitimate children were settled in the settlement of their mother by virtue of the second clause of 39 & 40 Vict. c. 61. s. 35 (1). That clause abolishes the distinction between children under and over sixteen, so that an illegitimate child takes the settlement of its mother at its birth, and retains that settlement until it gets one of its own. There can be no enquiry beyond the settlement of the mother; and having ascertained that she has a settlement, then that settlement becomes the settlement of the children.

(1) 39 & 40 Vict. c. 61. s. 35 : "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate, or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father, or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another.

"An illegitimate child shall retain the settlement of its mother until such child acquires another settlement.

"If any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

Madeley v. *Bridgnorth* (2), *Woodstock* v. *St. Pancras* (3), *St. Andrew* v. *Bodenham* (4) and *The Warwick Union* v. *The Hereford Union* (5) were referred to.

Bompas, Q.C., and *Lumley*, for the respondents, were not called on.

BRETT, M.R.—I am not going to say that this section is clear, and I do not think that it is necessary to say what the meaning of the second part of this section is—for it seems to me that the present point depends on the construction to be placed upon the third part of this section. If section 35 of 39 & 40 Vict. c. 61 (1) were not in existence, these children would take the settlement of their mother, and in this case her only legal settlement would have been that which she derived from her father; so that the question is, whether the third part of the section forbids us from enquiring what that legal settlement was. It appears to me that that part of the section does prevent that settlement from being enquired into. I think that the third part of the section applies both to legitimate and illegitimate children. Neither of the children in the present case had a settlement of its own; nor, of course, had either of them derived a settlement from any husband. The third part of this section says that if "it cannot be shewn what settlement such child or female derived from the parent"—that is, what settlement the children in this case derived from their mother—then certain consequences are to follow; and it assumes that in some cases an enquiry could but for this section be made into the settlement; but if the section does forbid the enquiry to be made, then the difficulty arises as to how it is possible to know whether the settlement is derivative or not until it has been ascertained what the settlement is: so that it is necessary to find out what the derivative settlement of the mother is, in order to shew that that settlement cannot be gone into. There must be an enquiry as to whether the mother has a settlement, and as to what the settlement is; and then the enquiry must stop if it turns out that the settlement is derivative: for then the child is, according to this section, to be deemed to be settled in the parish of its birth. I am therefore of opinion that the judgment of the Divisional Court is right, and must be affirmed.

BOWEN, L.J.—I agree that this appeal must be dismissed, and I also agree that the section is not very easy to construe. The vice in the contention of the appellants seems to me to be that they seek to give a settlement to the mother which is not her real settlement, but a settlement which she might have had in different circumstances; and that, I think, is not the true construction of the section.

The section contains three clauses: the first clause destroys derivative settlements, except in certain cases, none of which it would seem apply to illegitimate children—although it is not necessary to decide this; nor is it necessary to express an opinion on the second clause, which deals with illegitimate children; so that we come at once to the third clause, which enacts that, if the child has not any settlement, and the settlement of the mother cannot be shewn without enquiry into her derivative settlement, then the consequence is that such child shall be deemed to be settled in the parish of its birth. The section does not forbid an enquiry into the derivative settlement of the mother; but it says that the enquiry is not to be made for the purpose of proving a settlement for the child. The section, in fact, says that a settlement which exists is to be regarded, but that it is not to be displaced by a substituted fictitious settlement of the mother. There may therefore have to be an enquiry into a settlement, the result of which may be that as soon as the settlement is discovered it may prove to be a derivative settlement, and then it must be disregarded.

FRY, L.J.—I am of the same opinion. The first clause of 39 & 40 Vict. c. 61, s. 35, abolishes derivative settlements, except in certain cases. The second clause deals with illegitimate children, and enacts that

(2) 52 Law J. Rep. M.C. 71; Law Rep. 11 Q.B. D. 314.
(3) 48 Law J. Rep. M.C. 1; Law Rep. 4 Q.B. D. 1.
(4) 1 E. & B. 465; 22 Law J. Rep. M.C. 39.
(5) 48 Law J. Rep. M.C. 111.

in the case of illegitimate children there must be an enquiry into the settlement of the mother, both into her original and derivative settlement. Then the third clause applies, as it seems to me, both to legitimate and illegitimate children; and I think that an illegitimate child acquires and retains the settlement of the mother if that settlement was not a derivative settlement, but that it takes the settlement of the place of its birth if the settlement of the mother was a derivative settlement.

Judgment affirmed.

Solicitors—Clerkson, Greenwell & Co., for appellants; Lovell, Son & Pitfield, agents for T. J. Reynolds, High Wycombe, for respondents.

[IN THE COURT OF APPEAL.]

1884. May 17. } DINNING *v.* THE SOUTH SHIELDS UNION.*

Poor—Husband and Wife—Maintenance of Married Woman—Amount which Husband can be ordered to pay—31 & 32 Vict. c. 122. s. 33.

By section 33 of 31 & 32 Vict. c. 122, Justices are empowered to order a husband to pay such sum towards the cost of the relief of his wife as, after consideration of all the circumstances of the case, shall appear to them to be proper.

In a case where the guardians had allowed a married woman who had become chargeable to a union 3s. a week, and who had summoned her husband under the above statute, the Justices ordered him to pay 15s. a week towards the cost of the relief of his wife:—Held (*reversing the judgment of the Queen's Bench Division*), *that the order could be made, for that it was not a condition precedent to the power of the Justices to make an order that the guardians should first have fixed a sum for the future, and that they were not limited by the amount already paid by way of relief to the wife.*

Appeal from the judgment of the Queen's Bench Division on a Case stated by Justices.

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

The case is reported *ante*, p. 56.

The guardians of the South Shields Union preferred a complaint against Thos. Dinning that his wife Elizabeth Dinning had become chargeable to their union, and called on him to shew cause why an order should not be made on him to pay a sum weekly towards her relief and maintenance. It was proved that Elizabeth Dinning had become chargeable to the union, that Thomas Dinning had sufficient means to maintain her, and that the guardians had granted her an allowance of 3*s.* a week as relief. The Justices ordered Thomas Dinning to pay 15*s.* a week to the relieving officer towards the maintenance of his wife.

The Queen's Bench Division (*dissentiente* Lord Coleridge, C.J.), quashed the order, but gave leave to appeal.

The guardians appealed.

Wills, Q.C., and *Cock*, for the appellants.—The amount of relief actually given has nothing to do with the amount which may be ordered. 31 & 32 Vict. c. 122. s. 33 (1), does not fix any such limit, for its provisions are prospective.

Charles, Q.C., and *Bremner*, for the respondent.

[BRETT, M.R.—Is it a condition precedent to the authority of the Justices to make the order that the guardians should have fixed a sum?]

The burden on the parish gives the measure of the Justices' power; the Justices cannot decide what that burden will be, the only guide that they can have is the amount of relief which has been actually given. The Justices can only act under section 33 (1), and make an order "towards the cost of the relief of the wife." Relief is a technical

(1) 31 & 32 Vict. c. 122. s. 33: "When a married woman requires relief without her husband, the guardians of the union or parish . . . . to which she becomes chargeable may apply to the Justices, . . . and thereupon such Justices may summon such husband to appear before them to shew cause why an order should not be made upon him to maintain his wife, and . . . . may make an order upon him to pay such sum weekly or otherwise towards the cost of the relief of the wife as, after consideration of all the circumstances of the case, shall appear to them to be proper, and shall determine in such order how and to whom the payments shall from time to time be made. . . ."

word, and the cost of relief is what it costs the guardians, and therefore what it costs the ratepayers.

BRETT, M.R.—I think that under this statute the Justices are not entitled to grant to a wife an allowance in the nature of alimony. Their duty is to consider what is the proper amount of relief which ought to be given to the wife considered as a pauper; then they ought to consider the circumstances of the husband, and all the relevant circumstances which arise in connection with the case; and this being done, they can then order a husband to pay either the whole or part of the relief which they grant to the wife considered as a pauper. If the magistrates proceed on the ground that they are entitled to order alimony, or something in the nature of alimony, they would, I think, be exceeding their jurisdiction, and then there would be a remedy; but this case does not raise that question. The amount ordered here is not obviously alimony, so that no objection arises on that ground as to the jurisdiction of the magistrates; but the argument is that they could not make this order, as the guardians had not previously fixed the sum which was to be allowed in future: or that as the guardians had only allowed 3*s.* a week in the past, the Justices were limited to that sum. I am unable to think that the past order binds the Justices, nor do I think that it is a condition precedent to the authority of the Justices to make this order that the guardians should have previously declared and fixed the sum which is to be paid in the future. There are no express words in the Act which lay down any such condition, nor can it be imported into the Act by any necessary implication; so that I am unable to agree with the judgment of the majority of the Divisional Court. I think that the magistrates were entitled to make this order.

BOWEN, L.J.—I am of the same opinion. I do not think that there is any such condition precedent as has been suggested. The respondent attempts to extract it from the words "towards the cost of the relief" which are found in section 33, as though they meant that the order must be made in subvention of an order for relief already made. I do not think that such a limitation exists, although I agree that the Justices have not authority to make an order in the nature of alimony.

FRY, L.J.—I have come to the same conclusion. Section 33 of 31 & 32 Vict. c. 132, enables the Justices to summon the husband to shew cause why an order should not be made upon him, and it also enables them to say how and to whom the sum ordered shall be paid. I think, therefore, that the Legislature was not merely contemplating the case of a payment in aid of the sum already fixed, that there is no such condition precedent as is suggested, and that in this case it appears that the cost of the maintenance of the wife is 15*s.* a week.

Appeal allowed.

Solicitors—Iliffe, Russell, Iliffe & Cardale, agents for Mabane & Graham, South Shields, for appellants; J. S. Coleman, agent for J. J. Bentham, Sunderland, for respondent.

[IN THE COURT OF APPEAL.]

1884. May 9. THE GUARDIANS OF HEADINGTON UNION, OXFORD (*appellants*) *v.* THE GUARDIANS OF ST. OLAVE'S UNION, SURREY (*respondents*).*

Poor—Order of Removal—Children Deserted by Widowed Mother—Derivative Settlement—Birth Settlement of Children—Divided Parishes Act (39 & 40 *Vict. c.* 61), *s.* 35.

R. C. was born in the appellant union, and died leaving a widow and four children, none of whom were born in that union. Neither R. C. nor his widow had acquired a settlement in his or her own right, and the widow had deserted the children after the death of her husband. The father of R. C. had acquired a settlement in the appellant union. The children, who were under the age of sixteen, became chargeable to the respondent union and were ordered to be removed to the appellant union:—Held, *that the order of removal must be quashed, inasmuch as it was not*

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

shewn that the widowed mother had acquired a settlement of her own, and consequently the children would have to take the settlement of their father, which was a derivative settlement and could not be enquired into, as derivative settlements were abolished by 39 & 40 *Vict. c.* 61. *s.* 35.

Appeal from the Queen's Bench Division upon a Special Case; the facts stated were substantially as follows:—

On the 13th of October, 1881, two Justices for the county of Surrey adjudged that the place of the last settlement of Alfred Collier, aged seven; Henry Collier, aged six; Victor Collier, aged four; and Daisy Collier, aged three, was in the parish of St. Giles, in the appellant union, and ordered them to be removed there from the respondent union.

The children were the lawful children of Richard Randall Collier (who died in November, 1879) and of Mary Collier his widow, who was still living, at some place unknown. All the children were born out of the appellant union. Neither the father nor mother of the pauper children acquired a settlement in his or her own right. The father was the lawful son of John Collier, and was born in 1842 in the appellant union, in which union John Collier had acquired a settlement by renting a tenement.

The Court of Quarter Sessions held that the case came within the first clause of section 35 of 39 & 40 Vict. c. 61 (1); that the children took the settlement of their widowed mother in the appellant union, and dismissed the appeal, subject to the opinion of the Queen's Bench Division upon a Special Case.

(1) 39 & 40 Vict. c. 61. s. 35: "No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father, or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another . . . .

"If any child in the section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shewn what settlement such child or female derived from the parent without enquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

The Queen's Bench Division (Lord Coleridge, C.J., and Mathew, J.) declined to hear the Special Case, upon the ground that the Case stated that if the Court were of opinion that the order of removal should be quashed, judgment was "to be entered accordingly at the Quarter Sessions."

By consent of counsel, it was agreed that the case should be argued in the Court of Appeal as if these words had been struck out of the Special Case.

Bosanquet, Q.C. (with him *J. Shortt*), for the appellant union.—By the first clause of section 35 derivative settlements are abolished, and if that clause had stood alone an order for the removal of these children could not be made, because they could only be ordered to be removed to the appellant union by virtue of a derivative settlement. The section, however, contains certain exceptions—namely, "except in the case of a wife from her husband, and in the case of a child under sixteen." In the latter case, the child is to take the settlement of its father, if alive, or of its widowed mother if the father is dead, as the case may be, up to the age of sixteen, and is to retain the settlement so taken until it has acquired another. Here the father is dead, so that the children would go with the widowed mother and take whatever settlement she may have acquired other than a derivative settlement. But the settlement of the mother is a derivative settlement, for she acquired it from her deceased husband.

[He was stopped by the Court.]

Philbrick, Q.C., and *F. Mead* (with them *Reginald Brown*), for the respondent union.—In *The Guardians of Liverpool* v. *The Guardians of Portsea Union* (2) an order was sought for the removal of the mother and children; the father of the children had acquired a settlement by birth; but the mother had no settlement of her own: she was a wife, although she became a widow, and the Court was therefore entitled to enquire into the settlement of her husband.

The Court there seemed to think that as the wife had no settlement of her own she took the settlement of her husband on marriage, and that the children took their father's birth settlement. Unless an inde-

(2) *Ante*, p. 58; Law Rep. 12 Q.B. D. 303.

pendent settlement of the mother is proved, the father's birth settlement can be relied on. Any question as to the derivative settlement of the father must be ignored, and in all cases one must go back to his birth settlement.

[BOWEN, L.J., referred to *In re The Guardians of the Parish of Marylebone* v. *The Guardians of Wycombe Union* (3), and also to *Archbold's Poor Law* (4).]

Two constructions may be put upon the words "as the case may be." If the father is alive the child is to take his settlement; but if he is dead, then it takes the settlement of its widowed mother, but that is only if she has acquired a settlement. If the father had become chargeable to a parish, no evidence could be given of a settlement derived from his father, because that would be contrary to the terms of the first part of section 35. A settlement acquired in his own right must be stated, or else his birth settlement. When the father of these children died, his place of settlement was in the appellant union. That settlement was an original and not a derivative settlement. He had only acquired a settlement by birth, and a birth settlement gives a person a *status* of settlement. The birth settlement is subject to be displaced if either the person himself or his father subsequently acquire another settlement.

The Madeley Union v. *The Bridgnorth Union* (5) was also referred to.

BRETT, M.R.—In this case the question is as to the removal of four legitimate pauper children, whose father is dead and whose mother, though alive, has deserted them, and who have become chargeable to the parish in which they have been found. An order for their removal to the place of settlement of their father was affirmed by the Court of Quarter Sessions. That order is, by consent, to be treated as if the application had been made to the Queen's Bench Division to quash the order of removal. That consent was not taken in the Queen's Bench Division, and a preliminary objection was there raised that that Court could not decide upon the merits, because of the form in which the case was presented to them. We have not therefore any decision of the Court below on the merits, but only upon the preliminary objection; and we are not called upon to say whether that objection would be fatal, because the case is to be treated as if the order of the Quarter Sessions had been brought up to be quashed. The point before us is, therefore, whether the order to remove these children to the place of settlement of their father was right. The settlement of the mother is not known, nor whether she had acquired any other settlement. If she had not acquired any other settlement, and if she herself had to be removed, she could no doubt have been removed to the place of settlement of her husband. That point does not arise here, but the question is as to the removal of the children without their mother. The case depends upon the construction of section 35 of 39 & 40 Vict. c. 61, and I say again that I cannot see any clear reading of this section, and, in my opinion, it is unintelligible. One reading of the first part of the section would, to my mind, govern this case if the section can be read without doubt. Suppose the meaning of the words "except in the case of a wife from her husband" is except in the case where you are removing a wife, there the case of the wife would be wholly out of our consideration. If the meaning of the other part of the section is except in the case of removing a child under sixteen, which child is to take the settlement of its father, that is if its father is alive, or of its widowed mother if the father is dead, I think that this case would be governed by it and the children would then take the settlement of their mother. If that is the way of reading the section, the settlement of the mother was to be derived from her husband, unless it could be shewn that she had acquired a settlement of her own—that is, it being shewn that she had a derivative settlement. It being shewn that she is married and had not acquired a settlement of her own, you cannot enquire what was the settlement of her husband, and cannot therefore find what her settlement is: the case would then come within the third part of the section, and the children would go to the place of their birth, but certainly not to

(3) *Ante*, p. 88.
(4) 12th ed., p. 586.
(5) 52 Law J. Rep. M.C. 71; Law Rep. 11 Q.B. D. 314.

the place of settlement of their father. Is it necessary to determine that question now? There is a great difficulty in so holding, for if it be true, and the children are beyond the age of seven and under sixteen, the mother would have to go to the place of settlement of her husband; but in speaking of the children, you can only get at their settlement by reason of the derivative settlement of their mother, and they would therefore have to be sent to the place of their birth. That may be harsh legislation, but it may be that it is right. I think that the decision of Lord Coleridge in *The Guardians of Liverpoo* v. *The Guardians of Portsea* (2) tends to shew that that is not his view, but that his view is that if the widowed mother has not acquired a settlement of her own, you must enquire into the settlement of the father. That would not be so harsh, for if the mother and children are removed together, they would be removed to the place of settlement of her husband. The mother not having acquired a settlement of her own, the children would therefore also go to the place of settlement of their father. But if she had acquired a settlement of her own she would be removed there, and the children also would be removed with her, because it would then be unnecessary to enquire into a derivative settlement. If we can eventually come to that view of the section I should not be sorry. Supposing the view is that, if the mother has not acquired a settlement of her own, the children may be removed to their father's settlement, you come to the present case and ask what is the father's settlement. We have held that although—if the first part of the section stood alone—a derivative settlement could not be enquired into, except in the case of removing a wife and children, yet if you read the third part of that section it is obvious that the Legislature meant, if it meant anything, that you may to a certain extent be compelled to enquire whether the parent's settlement was a derivative settlement or not. In the recent case of *In re The Guardians of the Parish of Marylebone* v. *The Guardians of Wycombe Union* (3) we came to the conclusion that that obliges one, when enquiry is made as to the settlement of a child, to enquire whether the settlement of the parent is derivative or not. But the moment that it is found that the parent's settlement is a derivative settlement, further enquiry as to what it was is stopped, and the child must then be sent to the place of its birth. Upon that assumption, enquiry may in the present case be made into the settlement of the father of these children. The father was the legitimate son of a father who had acquired a settlement. Then what is the settlement of the son? It is stated that he had never acquired a settlement of his own, and therefore his settlement is the settlement of his father, and as that is a derivative settlement no further enquiry can be made, and the children must therefore be sent to the place of their birth. But it is not known where that is. When that case comes before us, we may have to construe this section with regard to the mother. There we stop, and although we cannot say where the children are to be sent, we must say that they are not to be sent to the appellant union. The only argument stated against that was that the father's settlement was a *status*—that is, that a derivative settlement is a *status* of settlement. With regard to that *status* it was said that the moment a child is born the *status* of settlement is the place of his birth. But if the father has a settlement, then the moment the *status* is supposed to be given it is taken away, because the father has a settlement, and the settlement of the child is the settlement which the father has acquired. It is clear to my mind that the way in which the proposition has been hitherto stated is right, and that the only meaning of a birth settlement is that the evidence as to where a man is born is *prima facie* evidence of the place of his settlement. That only comes to this—that the child would probably be born in the place where the father and mother live. It is a not unfrequent accident that the child is born in some place where the parents have no settlement. But in olden times, when people did not travel about as much as they now do, a child was *prima facie* born where his parents were domiciled and therefore settled. For these reasons, without giving any further opinion as to whether my mind goes exactly with what I am inclined to think was the view taken by Lord Coleridge as to the

construction of the first part of the section, I do not think it necessary to decide that point in this case, because, even if we were to differ from him, the case here would be clear. If we agreed with that view the case would nevertheless fail, because we are unable to tell here what was the settlement of the father of the children without enquiring into his settlement, which it is clear was a derivative settlement.

BOWEN, L.J.—I am of the same opinion. These children are under the age of sixteen, their father is dead, and the settlement of their mother is not known. An order has been made for their removal to the appellant union. The ground of our decision is that the settlement of the children's father has been shewn to be, not an original, but a derivative, settlement. But section 35 then comes into force, and in the first place abolishes derivative settlements, except in certain excepted cases, among which the present case would in the first instance fall. One case is, "except in the case of a child under the age of sixteen, which child shall take the settlement of its father, or of its widowed mother, as the case may be, up to that age." These children were under sixteen, and are therefore to take the settlement of their father or widowed mother as the case may be. The father, however, is dead, and therefore it may be said that they are to take the settlement of their widowed mother. But her settlement is unknown. It was argued that in that event the children are relegated to the settlement of their father. It is not necessary to decide what is the exact meaning of the words "as the case may be," which are difficult to construe: because, in any event, assuming that the children are to take the settlement of their father, they nevertheless fall within the scope of the third clause of section 35, which provides that, although they may take the settlement of their father, yet in the event of it being impossible to arrive at his settlement without enquiring into a derivative settlement, they are no longer to follow his settlement when it is found, but to go to a different place. The enquiry here shews that the father's settlement is a derivative settlement, and the children can no longer be compelled to follow that settlement.

FRY, L.J.—I am of the same opinion. The first part of section 35 provides generally for the abolition of derivative settlements. But it contains certain exceptions, one of which is "in the case of a child under sixteen, which child shall take the settlement of its father or widowed mother, as the case may be, up to that age." Two interpretations have been put upon the words "as the case may be." Upon the one hand it is said that the child is to take the settlement of its father, if living at the time when the question as to the removal arises; or of the widowed mother, if the father be then dead and the mother alive. On the other hand it is said that those words may only refer to the possible contingency of a widowed mother having subsequently to the death of her husband acquired another settlement. If the first interpretation is applied to this case, it would give to the children the settlement of their mother. But it has not been shewn that her settlement is in the appellant union. Supposing, on the other hand, the proper interpretation is that the children are to take the settlement of their father unless the widowed mother has subsequently acquired another settlement, then we are driven to enquire what was the settlement of the father; and that leads us to a consideration of the third clause of the section, which provides that enquiry shall not be made into the derivative settlement of the parent—so that enquiry must be made whether the parent had a derivative or original settlement. If the settlement is original, it can be acted upon; but not so if it is a derivative settlement. It is plain that the enquiry whether the parent here had a derivative settlement or not must be answered in the affirmative; and no further enquiry can be made. Under the third clause of the section, these children must be referred to the place of their birth. Upon either construction of the words I arrive at the same conclusion. The appeal must therefore be allowed.

Order of removal quashed.

Solicitors—Philpot & Son, agents for A. E. Ward, Oxford, for appellants; Saw & Son, Greenwich, for respondents.

[CROWN CASE RESERVED.]

1884. April 5. } THE QUEEN *v.* CARTER.*

Evidence — Receiving Stolen Goods — Guilty Knowledge — The Possession of other Stolen Property—The Prevention of Crimes Act, 1871 (34 & 35 *Vict. c.* 112. *s.* 19).

By 34 & 35 *Vict. c.* 112. *s.* 19, *it is enacted that—"Where proceedings are taken against any person for having received goods knowing them to have been stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of proceedings taken against him"*:—Held, *that, in order to shew guilty knowledge under that section, it must be proved that such "other property" was found in the possession of the prisoner at the time when he is found in the possession of the property which is the subject of the indictment.*

The Queen *v.* Drage (14 Cox C.C. p. 85) *approved of.*

Case reserved by the Chairman of the Quarter Sessions for the county of Essex.

1. The prisoner was indicted for stealing a mare, the property of Alfred Smith, on the 20th of May, 1883, and the indictment contained a second count for receiving the same animal well knowing it to have been stolen.

2. It was proved that Carter was in possession of the mare almost immediately after it was stolen, he having sold it on or about the 26th of May, 1883.

3. Evidence on behalf of the prosecution, to the effect that another mare, the property of Harry Broyd, which had been stolen on the 22nd of October, 1882, and for which a man named John Tolson had been convicted, was in the possession of Carter, and sold by him on the 9th of May, 1883, was tendered on the second count of the indictment, under the first paragraph of section 19 of the Prevention of Crimes Act, 1871, which is as follows:—"Where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of the proceedings taken against him."

4. It was contended on behalf of the prisoner that this evidence was inadmissible, inasmuch as Broyd's mare was not found in the possession of the prisoner at the time of his possession of Smith's mare, he having previously disposed of it.

5. Counsel for the prosecution contended that if such other property stolen within the preceding twelve months was found in the prisoner's possession at any time during the said twelve months the evidence of such fact was admissible; and the Court decided to admit it and to reserve the question for the opinion of this Court.

6. The prisoner was convicted of stealing and not of receiving the mare.

7. The question for the consideration of the Court is, was the evidence as to Droyd's mare having been in prisoner's possession admissible under the section of the Act before referred to.

Wedderburn appeared for the prisoner.
Grubbe appeared for the prosecution.

The Court held that the evidence was inadmissible, and that the decision of Bramwell, L.J., in *The Queen* v. *Drage* (1) was right and was directly in point.

Conviction quashed.

Solicitors—Haynes & Clifton, Romford, Essex, for the prosecution; J. W. Atkinson, Stratford, for the prisoner.

* *Coram* Lord Coleridge, C.J.; Hawkins, J.; Stephen, J.; Williams, J., and Mathew, J.

(1) 14 Cox C.C. p. 85.

[IN THE COURT OF APPEAL.]

1884. May 26, 27, 28. THE QUEEN (*on the prosecution of the Assessment Committee of the Poplar Union, respondents*) *v.* THE EAST AND WEST INDIA DOCKS COMPANY (*appellants*).*

Poor — Rating — Quinquennial Valuation—Supplemental Valuation—Alteration — Preceding twelve months — Evidence — Valuation (Metropolis) Act, 1869 (32 & 33 *Vict. c.* 67), *ss.* 46 *and* 47.

***The quinquennial valuation made under the Valuation (Metropolis) Act, 1869, is conclusive as to the value of the property at the time it was made, and the owner is not entitled, for the purpose of a supplemental valuation list, to have the property valued at its present actual value and such value entered in the supplementary list, but to have deducted merely the alteration, if any, in value which has taken place during the preceding twelve months** (*per* BRETT, M.R., *and* BOWEN, L.J.; FRY, L.J., *dissentiente*).

In support of a claim by the owner of property to have that property inserted in a supplemental valuation list made by the overseers of a metropolitan parish, on the ground that an alteration has taken place in the value of such property within the preceding twelve months, within the meaning of section 46 of the Valuation (Metropolis) Act, 1869, evidence of diminution in annual profits is admissible and relevant; and, unless explained or rebutted, is evidence of such diminution.

Judgment of Divisional Court (reported ante, p. 20) *varied.*

Appeal from a decision of the Divisional Court on a Special Case. The case is reported *ante*, p. 20, where the facts and sections of the Act relied upon are set out.

Sir H. Giffard, Q.C., and *Kenelm Digby* (with them *Marriott, Q.C.*), for the dock company.—The principle established by Grove, J., is that the alteration in value which occurs in one year cannot be taken into account, for it may be but part of a casual fluctuation in the profits, and that would not be a regular decline in the profits within the meaning of the statute; and that it is not open to the appellants to shew that the alteration is part of a regular diminution in the profits, for that would be to go beyond the particular year to which the statute confines the appellants. This view, it is submitted, is not the correct one. The statute allows the appellants to give evidence that there has been an alteration, and in so doing to shew, not only the diminution, but also the actual alteration in the value of the property assessed. Here the figures constitute the facts which establish that there has been a substantial alteration, and that that is not exceptional: so that that is the material fact which the hypothetical tenant would take into account.

25 & 26 Vict. c. 103. ss. 22 and 25; 32 & 33 Vict. c. 67. ss. 46 and 47; *The Queen* v. *The Abney Park Cemetery Company* (1), *The Queen* v. *The Grand Junction Railway Company* (2), *The Queen* v. *The Assessment Committee of St. Mary, Islington* (3) and *The Queen* v. *The Bristol Dock Company* (4) were referred to.

The Solicitor-General (*Sir F. Herschell, Q.C.*) and *Holl, Q.C.* (with them *Fullarton*), for the respondents.—The scheme of the statute is that there should be a periodical valuation made in which the whole question of the rateable value should be gone into, and that the value then arrived at should remain in force for the period of five years; so that even if there is an alteration in the value, still no enquiry can be made into the real value of the premises. The original value must be assumed to be settled, and then the amount of the diminution which has occurred within the year may be deducted therefrom. The assessment committee can only deal with the alteration which has arisen within the preceding twelve months. No evidence can be given of anything which has occurred prior to that period, and the only alteration which can be made is to deduct from the settled rateable value the diminution proved to have occurred within the twelve months. There can be no valua-

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

(1) 42 Law J. Rep. M.C. 124; Law Rep. 8 Q.B. 515.

(2) 4 Q.B. Rep. 18; 13 Law J. Rep. M.C. 94.

(3) 48 Law J. Rep. M.C. 123; Law Rep. 4 Q.B. D. 309.

(4) 1 Q.B. Rep. 535; 10 Law J. Rep. M.C. 105.

tion *de novo*: so that even if there is evidence of a diminution, still no evidence could be offered which would tend to prove that the original rateable value had been incorrectly fixed.

32 & 33 Vict. c. 67. ss. 43, 46 and 47 were referred to.

Digby replied.

BRETT, M.R.—In this case the Divisional Court quashed an order of the Assessment Sessions upon the ground that, although evidence was tendered to the sessions which was admissible and relevant, yet it was not *prima facie* evidence of such an alteration as would entitle that Court to order a supplemental list to be made out. On this appeal we are put into the position of the Divisional Court, and if we disagree with them to a certain extent, we must consider whether the order of the sessions should stand as it is, or whether it should be altered, and to what extent. The matter to be dealt with is the rateable value of certain docks, which were valued at what is called the quinquennial period, and that period is now running. In order to get at that rateable value, there was also necessarily the gross annual value which was also fixed at that time. The dock company, during the quinquennial period, assert that a supplemental list ought to be made by reason of an alteration in the rateable value of the docks which has occurred within the year preceding their application. On the other hand, it is asserted against them that there is no evidence of such an alteration as would authorise the proper authorities to make a supplemental list altering the rateable and gross annual value of the docks. It is clear that unless the dock company can shew that, by reason of something which has happened within the year before that in which they made their application for a supplemental list, the rateable value and the gross annual value of their docks is altered, then the valuation as shewn in the quinquennial list must stand, whether that valuation was right or wrong at the time when it was fixed. The Divisional Court held that evidence was tendered which was admissible and relevant in order to shew that there was such an alteration; but, as far as I understand their decision, it was held that, even when the evidence was admitted, it did not shew a *prima facie* case. On the present appeal it was argued against the company that there was no evidence at all which ought to have been admitted, and, further, that the evidence which was admitted afforded no *prima facie* case of an alteration within the preceding twelve months. The evidence which was tendered consisted of the books and accounts, and evidence to justify those accounts as correct, of the receipts and expenditure of the company during the last preceding year, and the accounts for several preceding years were also tendered in evidence, with the same evidence to justify their accuracy; and it is urged on behalf of the company that that evidence shewed that there had been a falling off in the receipts —although the rates for tonnage had not been altered—during the preceding year. If that be so, the necessary inference, if there has been no alteration in the amount of the rates, is that the diminution of receipts from the entry of ships into the docks can only have arisen from a less amount of tonnage having come into the docks. That would be clear; and, supposing it stood alone, would it or would it not, if not explained or rebutted, be *prima facie* evidence of an alteration in the rateable value occurring within the year? It is not necessary to decide that point, but I am inclined to think that it would be. The company, however, propose to go further, and to shew that the diminution in the amount of tonnage coming into the docks in the last year was not a mere accident, but was caused by a successive and permanent diminution of custom. If that is proved, I cannot myself doubt but that it is *prima facie* evidence of a diminution in the amount of their business, which diminution occurred during the last year, and is not a mere accident. The fact of a diminution of the amount of tonnage coming into the docks in the last year may be explained or rebutted by evidence which will shew that it does not really affect or vary the rateable value of the docks. If the diminution arises from a mere accident, that accident would be rectified according to the evidence brought forward, and might perhaps be replaced by an increase of tonnage in the following year. A mere falling off in the receipts

would not affect the rateable value; and if a temporary falling off would be rectified by an increase of receipts almost immediately afterwards, no tenant would care much about the temporary decrease in the receipts. But if, by reason of the evidence of what has happened during the previous period, the revenue would appear as if it would continue to fall, it is impossible to say but that any reasonable tenant would take that fact into account, and would not give the same rent for the property taking it "one year with another." I therefore agree with the Court below that the evidence was admissible and relevant; but I differ from them in this, that, although it was admissible in evidence, it did not afford *prima facie* evidence of an alteration within the year. If that be so, the Assessment Sessions ought to be allowed to consider that evidence—but not that evidence alone, for it may be explained or rebutted; it must therefore go before them in order that they may, taking that evidence and any other which may be offered and is admissible, ascertain whether, by reason of the diminution in the receipts within the last year, an alteration has been caused within that year in the rateable value of the docks. I think it would be wrong to send back the case to the sessions with a direction to consider the evidence, unless we were to endeavour to assist them as to the proposition which they have to decide upon the evidence which is brought before them. That raises a question of extreme difficulty. On the one side it was argued that proof of an alteration in the preceding year is a condition precedent to the admissibility of a supplemental list at all, and when the condition precedent has been fulfilled the whole enquiry as to what is the rateable value of the hereditament is to be begun *de novo* as if the quinquennial valuation had never taken place, and that the hereditament is to be then and there valued at the time when the supplemental list is being made, and as if it had never been valued before, and the value so obtained is to be compared with the value which is in the existing list; also that if the figure in the new list is found to be less or greater than that in the existing list, then that figure is to be put in the supplemental list. The Solicitor-General pointed out that, if that be the true construction, very considerable difficulties would arise, and I agree that it would be in the power of any person to force an appeal against the existing list—whether it be a quinquennial or a previous supplemental list—after the time allowed for an appeal had elapsed; because if, by reason of some alteration being made or occurring in the hereditament, he could reopen the whole matter, that would virtually be an appeal from what had been already decided. I do not think that the Act should be so construed as to produce that result. I think the meaning of the Act is that the prior decision which has not been appealed against must for all purposes be taken to represent the correct and existing figure; and that what one has to do when dealing with that as the correct and existing figure, is to see whether that figure has been affected by what has occurred within the preceding year. The question is, not whether what has occurred has diminished that which may be said to be the true value of the hereditament, but whether it has altered that which has already been decided to be the rateable value. If that be true, so also is the proposition that the gross rateable value in the supplemental list is to be ascertained, assuming that such value in the list then in force be correct at the commencement of the year in question, by adding thereto or subtracting therefrom the addition to or diminution from such value resulting from the alteration arising during the year. We do not therefore adopt the proposition that the whole matter is thrown open, and that a valuation is to take place as if nothing had happened before; but that the value in the existing list which is sought to be altered or varied is to be taken as the true value at the beginning of the year, and then it will be seen by comparison how far that value has been increased or diminished by what has occurred during the preceding year, and the value as altered is to be entered in the supplemental list. The result therefore is, that the order of the Divisional Court will be varied by sending the case back to the Assessment Sessions, in order that they may hear

evidence and solve this somewhat difficult question. If upon that evidence they find that there has been an alteration, a supplemental list must be made, and the value entered in that list accordingly.

BOWEN, L.J.—This seems to me to be an exceedingly difficult case. The rateable value of the docks in question was arrived at when the quinquennial list was made out; but what we have to decide is whether what has happened since, during the last twelve months, entitles the company to have an entry made upon a supplemental list correcting to some extent the original figure entered against them in the original list. The argument which has been addressed to us may be divided into two branches. First we have to consider whether any evidence has been laid before the Assessment Sessions which, unaltered, unqualified, unexplained, and not rebutted, is *prima facie* evidence of an alteration in the value of the premises. If we think there is *prima facie* evidence of such an alteration, we have further to consider to what extent effect is to be given in the amendment of the supplemental list to any alteration that the sessions may think is established upon enquiry—what, in fact, is the extent to which the enquiry, if opened at all, may be pursued. It seems to me that the falling off in the receipts for rates during the twelve months, at a time when it is admitted the rates were uniform—the fact, in other words, that less tonnage comes into the docks, coupled with a previous and continuous fall in the dock business—amounts to some evidence that in the last year the rateable value of the docks was not what it had been before.

The second matter we have to consider is the extent to which the enquiry is to be pursued, and the exact correction which the Act requires to be made, provided that some alteration is shewn to have taken place within the preceding twelve months. Is the whole matter thrown open; is the quinquennial list to be set aside; is the true rateable value of the premises upon the further enquiry to be assessed, or is such a correction only to be made in the figure on the existing list as measures and represents the alteration or fall which is shewn to have taken place in the rateable value within the twelve months? In order to answer these extremely difficult questions, the Act, which is not specific on the point, must be carefully considered. The Solicitor-General pointed out, and I think truly, that the quinquennial list is a substantial part of the machinery of the Act, the object of which is, on the one hand, to avoid drifting on year by year with the same valuation, which has long since perhaps ceased to represent the true value, and, on the other hand, to avoid year by year an enquiry *de novo* into the value each year of the premises. A sort of compromise is effected by the Legislature. The value is to be fixed quinquennially; but machinery has been provided for readjusting the annual value, and such readjustment is to be upon certain conditions, and, as it seems to me, only within certain limits. The quinquennial list was to be a reality; it was not to be thrown aside when the year was over, but was to last for five years. I do not think that the preamble of the Act is unimportant, where it recites that "it is expedient to provide for a common basis of value for the purposes of Government and local taxation, and to promote uniformity in the assessment of rateable property in the metropolis." Section 43 is the first section which deals with the quinquennial list, and it provides that the valuation list, as approved by the assessment committee, is to come into force at the beginning of the year succeeding that in which it is made, and it is to last for five years, subject to any alteration that may be made by any supplemental or provisional list as thereinafter mentioned; and it is, by section 45, to be conclusive for the purposes of certain rates and taxes, which really include most of the rates and taxes in force during the year, and certain qualifications. Section 46, upon the true construction of which our decision must turn, deals with the correction of the quinquennial list, and sub-section 1 provides for the readjustment of that list by means of a supplemental list. The Act does not say that the real and actual rateable value is to be put upon the supplemental list; but that list is to shew, not merely an alteration, but an alteration

which is limited by the proviso that it must have taken place within the preceding twelve months. It is true, as was pointed out by Sir H. Giffard, that there will be found upon the supplemental list, not, so to speak, a notice or statement that an alteration has taken place, but a figure which in some degree represents the alteration. In my opinion the figure cannot be said to shew an alteration which has taken place within the preceding twelve months, unless it in some way measures the alteration. A figure which bears no relation whatever to the alteration cannot be said to shew an alteration. The only satisfactory conclusion to which we can come on the words of the section—and I do not say it with any confidence, for I think the matter is obscure—is that the supplemental list must shew the figure to which the rateable value on the standard list should be altered, so as to allow for any alteration in the rateable value that may have occurred within the preceding twelve months. For the purposes of this calculation it must, as it seems to me, be assumed throughout that the rateable value already on the list was correct down to the commencement of the twelve months, and that all that has to be done is to make such a correction as is commensurate with the alteration in the rateable value which has since taken place during this limited period. The practical difficulties of any other view seem to me to be very considerable. If that is not the true construction of the Act, any dissatisfied ratepayer could practically always appeal after the quinquennial list has been made out, and after the time for appealing has expired, by taking advantage of an alteration which has been made in his premises, and thus open out a question, not merely as to the extent to which such alteration ought to be allowed to affect the quinquennial list, but as to the extent to which the value in the quinquennial list—the standard at which the original tribunal had arrived—should be challenged and discussed before a different tribunal. It is a *reductio ad absurdum*, to take the illustration which has been given of a man who by adding a story to his house is thereby able to reduce the rateable value of the house below that which had been fixed as its value in the quinquennial list. That case is not likely to occur; I do not know but that, even though it is an extreme case, the conclusion to which the argument of Sir H. Giffard would force us would not for some business purposes be almost as inconvenient, if persons, on the ground of small diminutions in the rateable value of their premises, were to be allowed to effect an entire reconsideration of the original decision pronounced as to the value of their premises by the tribunal at the time when the quinquennial valuation was made. It is also worth observing that it is not merely an alteration in the rateable value which sets free the ratepayer if the exact language of section 46 is insisted upon, because it is "all the alterations in any of the matters stated in the valuation list." It certainly would be absurd if, because the ownership or situation of the property had changed during the twelve months, a valuation *de novo* was to be within reach of the ratepayer, as it seems to me would follow from the construction which Sir H. Giffard asks us to put upon it. A serious difficulty, however, has been raised with reference to section 36. It was said that in providing the supplemental list all the proceedings are to be followed and the same regulations observed as in the case of the original quinquennial list; and that as, under section 36, if it was a question of the original valuation, an application might be made to the Assessment Sessions by any of the parties to the appeal to direct a valuation of any hereditament: so it follows, that in making up the supplemental list the same power to direct a valuation of the hereditament would exist; yet that such power would be wholly useless, if the argument of the Solicitor-General is to prevail, because all that is wanted would be a valuation of the alteration that has taken place in the rateable value. I do not feel pressed by that argument to the extent of altering my view of the Act, because I do not think it is at all clear in the first place that section 36 is intended to be incorporated for the purpose of the supplemental list by sub-section 3 of section 46; nor do I feel quite clear that it is still not possible that a valuation of the premises might be useful; nor, lastly, that the Assessment

Sessions might not have the power under section 46, when directing a revision, to direct the principle upon which, and the limits within which, the valuation is to be made. Taking a broad view of this Act, which is certainly obscure, it seems to me that it would not be consistent with that view to suppose that the quinquennial list was to be thrown aside whenever any alteration in the rateable value of a tenement was shewn to have taken place within the twelve months, but that all that can be done is to measure such an alteration, and to correct, as far as possible, the original list, treating it as if it was correct at the time when it was made, and as if a correction only was required so far as it had been affected by some subsequent alteration.

FRY, L.J.—There are two questions in this case. The first is whether the diminution of upwards of 20,000*l.* in the receipts of the dock company, while their rates remain the same, is some evidence of diminution in the rateable value of their property? In other words, is it a thing which may be reasonably expected to affect the mind of a person becoming tenant of this property? It appears to me that if I were about to take a property I should take into consideration the fall in the receipts. It is true, as has been urged on behalf of the respondents, that such a fact may be an accidental one, and may have been explained and taken into account on the previous valuation; it is also possible that such evidence may be rebutted; but, standing alone, it appears to me to be admissible, and to be evidence upon which the Assessment Sessions might or might not find that the rateable value had been diminished.

The second question is—assuming that the alteration is shewn to have taken place during the year, how are the sessions to proceed? Is the rateable value to be ascertained *de novo*, or is the alteration itself to be ascertained? Here I have the misfortune to differ from my learned brethren, and I do so with diffidence, because the subject is one with which I am less conversant than they are.

I approach the enquiry with this observation: that the general scope of the Act in question appears to be to provide machinery for ascertaining the true rateable value of property in the metropolis, and that that object was worked out in this way:—There is to be a quinquennial revision of the list; the quinquennial valuation is to be deemed to be in force until an alteration in the rateable value shall occur in some one year, in which case the list is to be amended. There are two modes in which that may be done—first, by a provisional list, and, secondly, by a supplemental list; and therefore, while there are undoubtedly provisions for giving force to the quinquennial list until it is replaced by another, there are also provisions in the Act for correcting that list in the event of any alteration taking place during the year. It is to be observed that it is the duty of the overseers of the parish, in the event of any such change taking place, to draw up a supplemental list which, through the machinery of the Act, may take the place of the quinquennial valuation. The result at which I have arrived is that section 46 does provide machinery for ascertaining the rateable value of property as for the quinquennial valuation; but it appears to me to provide no machinery for ascertaining the alteration itself, which is therefore to be ascertained by a comparison of the new with the old list. It is to be observed that under section 46, sub-section 1, the supplemental list is only to be made out if necessary; and if it is made out it is to be in the same form as the quinquennial list—no other form being given—and "shall shew all the alterations which have taken place during the preceding twelve months in any of the matters stated in the valuation list, but shall contain only the hereditaments affected by such alterations." An alteration may be shewn in one of two ways. Taking the case of a valuation, to shew the difference between the old and new value, the difference in value may be stated in terms by the actual amounts; thus, if stating the difference between 100*l.* and 500*l.*, the sum of 400*l.* may be put in the list; or the difference may be shewn by stating the two terms of comparison, which would shew that at one period the value was 500*l.* and at the other only 400*l.* Either of those two ways will shew the alteration, but one only will allow the list

to be in the same form as the valuation list—that is to say, if the difference is shewn by the comparison of the new list with the old, then the new list will follow the provisions of the Act and be in the same form as the original list; whereas, if the difference itself is shewn, the new list cannot possibly be in the form of the original list. I therefore conclude from the words referred to that the proper way is to draw up a new list similar to the old one. Sub-section 3, which is important, seems to introduce, generally speaking, all the provisions with regard to appeals in the case of a valuation; and, as has been pointed out, one of those proceedings which the Court may take upon such valuation is to direct a valuation of the hereditaments with respect to which the question arises. Without saying that the other construction is not a probable one, it appears to me that that is the only direction given by the Act as to the mode of ascertaining the valuation in the supplemental list. If that course is pursued, the difference will be found by a comparison of the valuation then ascertained; but the Act contains no provisions whatever for ascertaining the difference itself. Sub-section 6 also appears to me to be important, because it provides that a new valuation list, when it comes into force, is simply to supersede the valuation list which was in force during the fifth year. It appears to me that the valuation which is to be made under the section must include either both or one of the two values described in section 47 as the gross value and the rateable value. These must be ascertained by reference to what the hypothetical tenant would probably be expected to pay for the property. Several arguments have been adduced, which must be of great weight, as they have convinced my learned brethren that the construction which I have put upon the Act is wrong. In the first place it was said that section 47, which deals with the provisional list, shews that what is to be entered in that list is the gross and rateable value as so increased or reduced; and it was said that the provisions with regard to the provisional list and also to the supplemental list do relate to the same subject-matter. But the meaning I put upon the words "gross and rateable value as so increased or reduced" is that the true gross rateable value is in fact increased or reduced. The words are not "gross rateable value ascertained by the previous list," with the increase or reduction ascertained in some other way, but they refer, in my judgment, to the actual value of the property increased or reduced by the addition to the hereditaments. Then it was said that it was improbable that the Act should allow the true value to be ascertained where the alteration has taken place during one year, when it makes no provision for the correction of the list in case the quinquennial list is wrong. The answer to that seems to be this: The Act assumes that the quinquennial valuation was right, and therefore does not provide for anything except a revaluation, when there may be an alteration. If it appears to be wrong, then there is no reason why it should not be corrected in the case where an alteration arises. Then it was suggested that if the construction I have put upon the Act is right it will be competent to an occupier who considers himself to be over-rated by the quinquennial list to make an addition to his property and to suggest that that has created an alteration in its value, so that he may thereby obtain a reduction in its value. But I am by no means sure that such a case would arise within the scope of the view which I take, because I am inclined to think that he would not in that case be able to prove an alteration in the value. But, even supposing it to be so, it appears to me that the case is a highly improbable one; and although extreme cases are very valuable as tests of principles, they are not safe guides in construction, where one must look at the probable course of events and not at remote contingencies. Even if the case should occur, I am not satisfied that it would be a very unreasonable conclusion, or that injustice would be done, or that such an absurd conclusion would be arrived at as to compel one to put a different construction upon the Act. Lastly, it was said that inasmuch as any alteration gives rise to this revision, an alteration in the name of the occupier may require a revision of the property; but I am by no means satisfied that that is the true construction of the Act. I think that a new valuation is considered a different

thing from an alteration in other respects, for I find the words "supplemental list" and "new valuation" spoken of separately. However, it will be time enough when the point arises to consider whether the mere change in the name of the occupier would give a right to have the list revised; but I think that upon a true construction of the Act it will be found that there is no such right. I think, therefore, with great distrust in my own judgment, that the Act does provide machinery in the case of a supplemental list for ascertaining and proving the real value, and that the alteration or difference may be shewn by a comparison between that new list and the old one.

Decision of the Divisional Court varied, and Case remitted to the Sessions for further hearing.

Solicitors—Freshfield & Williams, for appellants; J. W. Marsh, for respondents.

1884. May 27. THE SCHOOL BOARD FOR LONDON (*appellants*) *v.* DUGGAN (*respondent*).

Elementary Education Acts—By-laws under 33 & 34 Vict. c. 75. s. 74—Parent not causing Child to attend School—Reasonable Excuse.

The father of a girl twelve years old, able to read fluently and to write well, and fairly instructed in arithmetic and grammar, though not out of the second standard prescribed by the Education Department Code of 1876, *omitted for a time to send her to school, being then unable to earn enough to provide for his family without money which she earned. He was charged with thereby offending against by-laws under the Elementary Education Act,* 1870, *section* 74, *as subsequently amended, which required the parent of every child not less than five nor more than thirteen years of age to cause it to attend school unless there were a reasonable excuse, and declared that any of the following reasons should be a reasonable excuse—namely, (a) that the child was otherwise under efficient instruction; (b) that the child was prevented by sickness or any unavoidable cause; (c) that there was no public elementary school open which the child could attend within two miles; and further provided that a child beneficially and necessarily employed should not be required to attend school for more than five attendances weekly if duly certified to have reached the third standard. The magistrate found that there was a "reasonable excuse" for the child's non-attendance at school, and dismissed the charge:*—Held, *that the magistrate was justified.*

This was an appeal from a decision of a metropolitan police magistrate, by a Case stated under 20 & 21 Vict. c. 43, which was in substance as follows:—

The respondent was summoned to answer a charge made against him by the appellants, that he, residing within the appellants' district, and being the parent of a child called Margaret, residing with him and not less than five nor more than thirteen years of age, unlawfully neglected and omitted to cause her to attend school on the 22nd of February, 1884, and divers other days, contrary to the appellants' by-laws.

The appellants' by-laws, which purported to be made under the Elementary Education Act, 1870, s. 74 (1), as amended by the

(1) 33 & 34 Vict. c. 75. s. 74:—"Every school board may.... make bye-laws.... (1) requiring the parents of children, of such age, not less than five years nor more than thirteen years, as may be fixed by the bye-laws, to cause such children (unless there is some reasonable excuse) to attend school.... (4) imposing penalties for the breach of any bye-laws.... Provided that any bye-law .... requiring a child between ten and thirteen years of age to attend school shall provide for the total or partial exemption of such child.... if one of Her Majesty's inspectors certifies that such child has reached a standard of education specified in such bye-law. Any of the following reasons shall be a reasonable excuse—namely, (1) that the child is under efficient instruction in some other manner; (2) that the child has been prevented from attending school by sickness or any unavoidable cause; (3) that there is no public elementary school open which the child can attend within such distance not exceeding three miles.... as the bye-laws may prescribe.... It shall be lawful for Her Majesty in Council to sanction the said bye-laws, and thereupon the same shall have effect as if they were enacted in this Act...."

School Board for London v. *Duggan.*

Elementary Education Act, 1876 (2), and were sanctioned by the Queen in Council on the 17th of May, 1879, said (by-law 2):—"The parent of every child of not less than five nor more than thirteen years of age shall cause such child to attend school unless there be a reasonable excuse for non-attendance. Any of the following reasons shall be a reasonable excuse—namely, (*a*) that the child is under efficient instruction in some other manner; (*b*) that the child has been prevented from attending school by sickness or any unavoidable cause; (*c*) that there is no public elementary school open which the child can attend within two miles. . . ."

[A copy of the by-laws formed part of the Case. By-law 5 provided (*b*):—"A child between ten and thirteen years of age, shewn to the satisfaction of the local authority to be beneficially and necessarily employed, shall not be required to attend school for more than five attendances in each week . . . . if such child has received a certificate . . . . that it has reached the third standard prescribed by the code of 1876."]

The child, at the time of the hearing of the summons (on the 22nd of March, 1884), was twelve years and seven months old. She was only working in the second standard, but could read fluently, could write well, and had been fairly instructed in both arithmetic and grammar. She had been absent from school on the 22nd of February, 1884, and other days.

The mother attended for the respondent, and said by way of excuse for the child's non-attendance that she was the eldest of several children, and during the time in question had been employed as nursemaid in a respectable family, and earned 3*s.* a week and her food; that the respondent was a labourer at very small wages, and without the child's earnings his earnings would not have sufficed to provide adequate food for the children, and the health of some of them would have been likely to be seriously injured; that the respondent could not have earned more than he had done, and she herself (the mother) was, without any fault, out of work, and neither she nor her husband spent money in drink or in anything unnecessary; that when the child's earnings were not necessary she should go to school as she had gone before. By admission, and by examination of the details of the number of children and the amount of the respondent's wages, the magistrate was satisfied that the excuse was true in all respects. It was also admitted that the respondent and his wife were hardworking, respectable people, influenced only by a desire for the benefit of all the children.

The Case said that there were no other facts than those mentioned in the last paragraph to entitle the child to be excused from attendance at school.

The magistrate found as a fact that there was a reasonable excuse for the child's non-attendance at school, and dismissed the summons. He thought that not only was the excuse given a reasonable excuse in point of good sense, but that as by 31 & 32 Vict. c. 122. s. 37 it was an offence for a parent not to provide for his children adequate food, &c., the sending the child to work was lawful and right. He referred to *The Belper School Attendance Committee* v. *Bailey* (3) as deciding that there might be other reasonable excuses besides those mentioned in the by-laws.

It was contended before him, on the part of the appellants, that by virtue of the Elementary Education Act, 1876 (2), sections 5, 6 and 48 (4), the employment of the child was illegal, and therefore no reasonable excuse had been shewn. On the part of

(2) 39 & 40 Vict. c. 79.

(3) 51 Law J. Rep. M.C. 91; Law Rep. 9 Q.B. D. 259.

(4) Section 5: "A person shall not . . . . take into his employment (except as hereinafter in this Act mentioned) any child (1) who is under . . . . ten or (2) who, being of" or above that age, "has not obtained" a certain "certificate either of . . . . proficiency . . . . or of previous due attendance at . . . . school, unless such child being of" or above the age of ten "is employed and is attending school in accordance with . . . . the Factory Acts or" any by-law under the Elementary Education Act, 1870, section 74, as amended by the Elementary Education Act, 1873, and this Act.

Section 6: "Every person who takes a child into his employment in contravention of this Act shall be liable . . . . to a penalty not exceeding 40*s.*"

Section 48: "A child in this Act means a child between the ages of five and fourteen years. . . ."

the respondent, it was contended that the finding that there was a reasonable excuse was correct, and sufficient to justify a dismissal of the summons, and that the question whether the employer could be convicted for employing the child was not free from doubt, and could not affect or be determined on the summons against the father.

The question submitted as the question of law for the opinion of the Court was whether the dismissal of the summons was justified; if justified, the dismissal was to stand; if it was not justified, the case was to be remitted to be dealt with according to law.

G. M. Freeman, for the appellants.—The three cases of "reasonable excuse" specified in the Elementary Education Act, 1870, section 74 (1), and in these by-laws, though they may, in accordance with *The Belper School Attendance Committee* v. *Bailey* (3), not be the only excuses admissible as reasonable excuses, must be taken to be types of "reasonable excuse." And the excuse given here—namely, the parents' supposed need of the child's earnings—is quite different in character from each of those. This case must be looked at from the point of view of the child's interest.

[MATHEW, J.—Would it have been for the interest of the child that she should be sent to school without food?]

The parent might have applied for poor-law relief, and ought to have done so, rather than let his child be away from school. Further, the employment of the child was illegal by the Elementary Education Act, 1876, sections 5 and 6 (3), and therefore could not be relied on towards establishing an excuse.

The respondent, who was not represented by counsel, was not called upon.

STEPHEN, J.—We are both of opinion that the decision of the learned magistrate was right. It is found as a fact that the child's earnings formed a considerable part of the family income and were necessary to the support of the family; and I should need to be shewn an enactment compelling me in the very clearest language so to do, before requiring a child to neglect its sacred duty towards its parents in order to take in some additional reading, writing and arithmetic beyond such a quantum as this child already possessed. I think the magistrate was justified in holding that there was a "reasonable excuse" for the child's non-attendance at school and in accordingly dismissing the summons.

MATHEW, J., concurred.

Appeal dismissed.

Solicitors—Gedge, Kirby & Millett, for appellants.

[IN THE COURT OF APPEAL.]

1884. Jan. 29. 30. DYSON AND OTHERS (*appellants*) *v.* THE GREETLAND LOCAL BOARD (*respondents*).*

Public Health Act, 1875 (38 & 39 *Vict. c.* 55), *s.* 216—*Parish divided into Two Districts—Part of Parish excluded from Urban District—Repair of Highways in excluded part—Amount of Rate assessed for.*

The hamlet of G., which was formerly a parish maintaining its own highways, in the parish of H., was divided into two districts. In 1865 *the inner district was constituted a local government district, and became an urban district within the meaning of the Public Heath Act*, 1875, *the respondents being the local board of that district, from which the outer district was excluded. The respondents, having repaired the highways in the outer district, levied a highway rate of* 2*s.* 6*d. in the pound over the outer district; but as this was found insufficient to pay the expenses of such repairs, a special meeting was, after notice, subsequently held, at which a rate of* 3*s.* 4*d. in the pound was separately assessed on the appellants and others, the inhabitants of the outer district. The consent of four-fifths of the inhabitants of the outer district was not first obtained before the rate in question was levied:*—Held, *that the rate was valid, as the provisions of section* 216

* *Coram* Lord Coleridge, C.J.; Brett, M.R., and Bowen, L.J.

Dyson v. *Greetland Local Board, App.*

of the Public Health Act, 1875, rendered such consent unnecessary.

Appeal from a judgment of the Queen's Bench Division upon a Special Case stated by Justices for the West Riding of Yorkshire, held in April, 1882.

By an order of one of the Secretaries of State, dated the 11th of March, 1865, the Local Government Act, 1858 (21 & 22 Vict. c. 98), was adopted within part of the hamlet of Greetland, in the parish of Halifax, called the inner district. The district so constituted a local government district was at the time of the making of the rate hereinafter mentioned an urban district within the meaning of the Public Health Act, 1875, and the respondents were the local board of health of that urban district.

The other part of the hamlet of Greetland—the outer district—was, by the terms of the above-mentioned order, excluded from the operation thereof, and was under the jurisdiction of the rural sanitary authority of the Halifax Union for sanitary purposes.

The appellants were occupiers of certain lands and tenements situate within the outer district.

The outer district had not been formed into a separate highway district, nor had it been included in any highway district under the Highway Acts.

The hamlet of Greetland was a part of a parish within the meaning of sections 5 and 29 of the Highway Act, 1835 (1).

The respondents, pursuant to the powers granted to them, borrowed money for the purposes of works of water supply and sewerage within the inner urban district, and provided the said works, the expenses of which were charged on and defrayed out of the general district rate.

In December, 1880, the respondents levied a highway rate of 2*s.* 6*d.* in the pound over the outer district; and as the sums produced thereby were not sufficient for the payment of the expense of the highways in that district, the respondents, on the 24th of November, 1881, issued a notice calling a special meeting of the Greetland local board to be held on the 5th of December, "for the purpose of levying a highway rate of 3*s.* 4*d.* in the pound upon property assessable thereto in that part of the district of Greetland outside the limits of the Greetland local board, but included in the district of the board for highway purposes."

The notice, which was duly posted in the inner district, was also sent to every member of the board.

There was no place of worship, nor any vestry or vestry meeting in the outer or excluded part.

On the 5th of December, 1881, the special meeting was held, at which a highway rate of 3*s.* 4*d.* in the pound was unanimously resolved upon, payable in two equal instalments, and notice that the rate had been levied was duly given and posted.

Except as above stated, no notice of a meeting specially called for the purpose of obtaining the consent of the inhabitants of the outer district who contribute to the said highway rate was given by the respondents, nor was any such meeting held, and, except as above-mentioned, no consent of the inhabitants was given.

Towards payment of the first instalment of the rate of 3*s.* 4*d.* in the pound, each of the appellants was rated and assessed in respect of property situate in the outer district, and payment of the amounts of their respective assessments was demanded of them.

The appellants gave notice of appeal against the rate, and the appeal was duly heard at the General Quarter Sessions.

On behalf of the appellants it was contended that the rate was improperly made and levied, and was invalid.

The Quarter Sessions confirmed the rate,

(1) 5 & 6 Will. 4. c. 50. s. 29: "Every rate shall contain the names of the occupiers, the description of the premises or property they occupy, and the full annual value of such premises or property, and shall also specify the sum in the pound at which it is made; and no rate to be levied or assessed as aforesaid shall exceed at any one time the sum of tenpence in the pound, or the sum of two shillings and sixpence in the pound in the whole in any one year: provided, nevertheless, that, with the consent of four-fifths of the inhabitants of any parish contributing to the highway rate, assembled at a meeting specially called for that purpose, . . . the rate to be levied and assessed as aforesaid may be increased to such sum as the said inhabitants so assembled may think proper."

subject to a Special Case for the opinion of the Queen's Bench Division.

On the 19th of April, 1883, the Queen's Bench Division (Field, J., and Mathew, J.), affirmed the decision of the Court of Quarter Sessions.

Meadows White, Q.C., and *J. F. Moulton*, for the appellants.—The rate is bad because it is in excess of the limit fixed by the Highway Act, 1835, s. 29. The highest rate that can be made at any one time is 10*d.* in the pound, or 2*s.* 6*d.* in the pound in the whole in any one year. If a larger sum is required, the consent of four-fifths of the inhabitants contributing to the highway rate must be obtained at a meeting called for that purpose. Such consent has not been obtained in the present case. The rate to be levied is a highway rate as distinguished from a general district rate. Under section 216 of the Public Health Act, 1875 (2), the urban authority is to levy the rate as "surveyor of highways"; the Highway Act, 1835, provides the mode in which the rate is to be assessed and levied. In order to ascertain the limit imposed by the Act of 1835, sections 27 and 29 must be read together. If the Legislature had intended to repeal that limit, express words to that effect would have been used. There is nothing in the Public Health Act, 1875, which authorises the authority to levy a rate, or, what is more important, which states out of what property the rate is to be paid. The words "as surveyor of highways" in section 216, sub-section 2, of the Act of 1875 incorporate the provisions of the Highway Act, 1835, so that the machinery provided by that Act is applicable to this case.

F. O. Crump, for the respondents, was not called on.

Lord Coleridge, C.J. — In this case the point is clear enough. The rate was made by the local board in respect of a portion of the district—the outer district—which had not had the full benefit of the local government, for the rate had been made in respect of a part of the district in which there had been no works of paving, water supply, and sewerage as there had been in another part called the inner district. The local board contains within its ambit of authority the outer, as well as the inner, Greetland district; and the outer district objects to a rate which has been levied by the board on that district, upon the ground that it is for certain purposes only within the authority of the local board. It is true that by section 144 of the Public Health Act, 1875, the local board is to execute the office of surveyor of highways for the whole district; but, unless the repairs done to the highways within the inner district are defrayed out of the general district rate, and the purposes to which that rate is to be applied are not taking effect in the outer district, the rate is to be

(2) 38 & 39 Vict. c. 55. s. 144: "Every urban authority shall within their district, exclusively of any other person, execute the office of and be surveyor of highways, and have, exercise and be subject to all the powers, authorities, duties and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have, exercise and be subject to all the powers, authorities, duties and liabilities which, by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district. . . ."

Section 216: "In any urban district where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and the general district rates, and no other mode of providing for repair of highways is directed by any local Act, the cost of repair of highways shall be defrayed as follows: (that is to say)—

"1. Where the whole of the district is rated for works of paving, water supply and sewage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate.

"2. Where parts of the district are not rated for works of paving, water supply and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate, to be separately assessed and levied in those parts by the urban authority as surveyor of highways, and the costs of such repair in the residue of the district shall be defrayed out of the general district rate.

"3. Where no public works of paving, water supply and sewerage are established in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the urban authority as surveyor of highways."

governed by different rules, and the authority of the local board is to be limited by different considerations to those which govern the collection of the general district rate over such portions of the district as are within the operation of that rate, and in which the highways are only part of the several works of paving, water supply and sewerage. Can it be said in respect of portions of the district where there are no such works, and in respect of which there is only a highway rate, and in respect of which the local board acts as surveyors of highways alone, that they are to act as if they were the old surveyors of highway, and that their powers are to be limited by the same limitations as had been imposed by statute upon the old surveyors? That is the substantial objection made to this rate.

No doubt, if that be the true meaning, in point of law, to be put upon section 29 of the Highway Act, 1835, this rate cannot be supported, because the old surveyors of highways never could levy more than 10*d.* in the pound for a single rate, or 2*s.* 6*d.* in the pound in the whole in any one year. Section 6 of the Act of 1835 makes provision for the election of a surveyor, whose duty it is to repair, and keep in repair, the several highways in the parish; then section 27 enables him for that purpose to make a rate, and do certain things in respect of it; and section 29 regulates the form and amount of the rate. That is the state of things in existence in many parts of the country in which for many purposes a great portion of this Act of Parliament is still in operation, and although section 29 is not itself probably in operation, yet the Act of 1835 has been amended by 25 & 26 Vict. c. 61, by which another kind of machinery has been substituted, and provision has been made for the election of waywardens. But it is material to notice that the powers, rights and duties of a highway district which is created by the Act of 1862 are expressly limited in section 11 to the same extent as the old surveyors of highways had been limited. It was said that the waywardens had no greater powers than the surveyors under the Act of 1835, and that the contribution to be paid by a parish was not to exceed the sum of 10*d.* in the pound at any one time, or the sum of 2*s.* 6*d.* in the pound in the whole in any one year; and that the limit remains substantially the same as under the earlier statute. That is the state of the law in respect of places where there is either no district board, or where the district board is substituted for the old surveyors of highways. Upon that state of the law the Public Health Act of 1875 came into operation, section 144 of which constitutes the urban authority—that is, the respondents here—the surveyor of highways for the whole district of Greetland. That being the constitution of the urban authority, we come to section 216, upon the true construction of which the present case turns. That section deals with the costs of repairs of highways, and is headed "highway rate." The urban authority is, by section 144, made the surveyor of highways; but its powers, duties and liabilities are explained in section 216. The cost of repairing the highways is, under sub-section 1, to be defrayed out of the general district rate, where the whole of the district is rated for works of paving, water supply and sewerage, or for works for such of these purposes as are provided for in the district. That sub-section, however, does not apply here, because a part only, and not the whole of the district, has been rated. Sub-section 2, however, does apply, for it provides that where parts of the district—that is, the outer Greetland district—are not rated for works of paving, water supply and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts is to be defrayed out of a highway rate which is to be separately assessed and levied in those parts by the urban authority as surveyor of highways; and the cost of such repair in the residue of the district is to be defrayed out of the general district rate. At first sight it would seem to be a very reasonable provision, where the highways in the whole of the district have been repaired, and where there is a rate which when you come to disintegrate it is leviable upon the whole district, that that rate at the same amount, though not to be levied as to part of the general district rate because many of the purposes for which

it is levied are not applicable to the whole district, is nevertheless, in respect of such portion of the general rate as part of the district shares in common with the rest of the district, to be the same as that of the rest of the district in respect of the same subject-matter. Although it may be difficult to disintegrate and find how much is applicable to the paving, water supply and sewerage, it would be an easy matter to ascertain how much of the general district rate is applicable to the highway; and I assume that something like a reasonable calculation to that effect has been made in this case, That part of the district is to be liable for the same amount in the pound as its neighbour, and the section seems to authorise the local board to proceed to rate any part of the district where there is nothing to be done except to repair the highway. A highway rate is to be made, and is to be separately levied and assessed in those parts, and is to be levied by the local board as surveyor of highways under section 144. Now what is there in section 216, sub-section 2, to shew that by the words "as surveyor of highways," and in the words of section 144, that the board is to have "all the powers, authorities, duties and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities or duties are, or may be, inconsistent with the provisions of this Act," where the local board is acting under totally different circumstances and acting as surveyors, the Act means more than it says —namely, that the board is to have power to act in the outer part of the district, where there are only highways to be repaired, in the same way as within the inner part, where something more than the repair of highways has to be done. It is the same body with the same authority, and, so far as it is limited, is limited only by the same limitations as are applicable to the general authority over the district over which they have power. It is said, and no doubt with some force, that inasmuch as this is a separate part of the district which is not within the general scope and operation of the local board, and in which (as I understand) the inhabitants have taken no part in the proceedings at which power is given to a body to assess and rate persons who have not joined in the election of persons who are so rated, an inconvenience would arise, and that it would be contrary to principle. I do not say that it is not an inconvenience, and that to a certain extent it is not a violation of certain rules. No doubt it may be. But the disadvantages of another construction must be considered. It may be that, upon a common subject-matter, the liability of these highways within the district to which for the purposes of the highways the appellants belong is to be limited in the manner provided by section 29 of the Highway Act, 1835, whereas the liabilities of other inhabitants may be extended, so far as I am aware, to any amount.

It was suggested that the object of the provisions in the earlier Acts was to prevent the extravagance of the local waywardens. But the answer is, that persons in the position of surveyors of highways—and it is to be observed that they are to be surveyors exclusively of any other person—who are elected in a different way and are subject to different considerations, are to be subject to rules and limitations which might have been excellent and reasonable in the first instance, but which would have no reason when applied to a body like a local board. Sub-section 3 of section 216 is, as it seems to me, still more plain, and throws light upon sub-section 2, which applies here, because we have to deal with a district parts of which are not rated for works of paving, water supply and sewerage.

Sub-section 3 deals with a district in which no public works of paving, water supply and sewerage are established in the district, and provides that the cost of repair of highways in the district is to be defrayed out of a highway rate, which is to be levied throughout the whole district by the urban authority as surveyor of highways. The argument, as it seems to me, is irresistible. If the contention of the appellants as to a district within sub-section 2 is good, it is *a fortiori* good as to a district within sub-section 3, for a local board, which has a totally different character to that of the old surveyors,

would be subject to a limitation for which there is no reasonable ground. So the matter would stand under section 216 alone. It seems to me, however, that in order to sustain the contention of the appellants sub-section 2 should contain, in addition to the words "as surveyor of highways," some such words as "provided always that it shall not exceed the limit of 2*s.* 6*d.* in the pound." But no such words appear, and it seems to me, even if it had not been so provided by section 144, that where the main object and language of the later statute are, according to reasonable construction, inconsistent with that of the earlier statute the later statute is to prevail. Certain provisions in section 217 do not weaken the argument, for the acts there mentioned had to be done by the old surveyors of highways; but they are acts from the doing of which the urban authority are expressly relieved by that section. Nowhere is it to be found that the general construction is to enlarge the authority so far as the amount of the rate to be assessed is concerned. I confess I cannot see any reason why the operation of section 216 should be cut down in the absence of any definite enlargement of section 217. For these reasons I am of opinion that the judgment of the Court below was correct, and the appeal must therefore be dismissed.

BRETT, M.R.—In this case the defendants are the local board in an urban district, and are therefore the urban authority in the urban district. The board has authority over one district, which, however, is divided into two parts. That is the construction of the Act of Parliament which applies to a district which is divided into two parts. This local board has repaired the highways in both parts of one district. The repairs in the outer district have been assessed upon property in the outer district to the extent of 3*s.* 4*d.* in the pound without a special meeting of the inhabitants of that district having been called, and without the consent of the majority of the inhabitants having been obtained.

The question whether the rate which has been assessed in the outer district for repairs done to the highways in that district is good or not, depends solely upon the construction of the Public Health Act, 1875. The board, which is the sanitary authority of the urban district, is, by section 144 of the Act of 1875, made the surveyor of highways within that district, and is therefore the surveyor of the highways within the whole of the district—both in the outer and inner parts—and in both parts has "all the powers, authorities, and duties of surveyors of highways under the law for the time being in force." The way in which those words should be construed is that the board has the right to exercise, and is also subject to all the powers, authorities and duties of surveyors of highways under the law for the time being in force, save so far as the same are, or may be, inconsistent with the provisions of the Act. If these words had stood alone I do not think that they would include the mode of levying the rate. But, supposing that the authority given does include the right to exercise that power, save and so far as the same is not inconsistent with the Act, the provisions with regard to the assessment of the rate are to be found in section 216. No doubt section 144 refers to the former legislation on the subject of highways, because the board is to exercise all the authorities, powers and duties of surveyors of highways under the law for the time being in force. If the whole of the district is rated for works of paving, water supply and sewerage, the cost of repair of highways is, under sub-section 1, to be defrayed out of the general district rate. In such a district the authority is to exercise all the powers, authorities, and to perform all the duties and be subject to all the liabilities of the old surveyors of highways; but when payment is to be made for the works which have been done, that duty is no longer to be performed as surveyors, but in a different way—namely, out of the general district rate. Therefore, to say that the board is to act subject to the limitations imposed upon the old surveyors of highways is obviously inconsistent. Section 144 has nothing to do with the question of payment of the cost of repair of highways. If the condition of the district is that described in sub-section 2, it seems to me to be difficult

to say that the payment of the cost of repairs is to be made in the same way as it was made by the surveyors of the old highways. The local board, which is of great authority, is elected by the inhabitants, and has many other duties to perform more important and extensive than those of repairing the highways, and with regard to which duties there is no such limitation of authority as has been suggested. The conduct only of the board is subject to be enquired into; and, so long as it is the local authority, the inhabitants have no authority over it. It is said, however, that if the cost of repairs of highways exceeds 2*s.* 6*d.* in the pound, the consent of four-fifths of the inhabitants of any parish contributing to the highway rate must be obtained at a meeting specially called for that purpose. But, by sub-section 2, where parts of the district are not rated for works of paving, water supply and sewerage, the cost of repair of highways in those parts is to be defrayed out of a highway rate which is to be separately assessed and levied in those parts by the urban authority; and, unless the words "as surveyor of highways" bring in the limitation imposed by the Highway Acts, it seems to me that no limitation is imposed. An urban authority has many characters under the Public Health Acts. Thus, for instance, it is a sanitary authority; also, under section 144, it has, in addition, the character of surveyor of highways. But those words seem to me to have reference only to that part of the character of the urban authority which is imposed by the Public Health Act; and as they refer to something within that Act, they have not the force for which they have been cited, and therefore the limitations imposed by the Highway Acts do not affect the conduct of the board as surveyor of highways. I confess that I have been much led to that opinion by the consequences of reading it otherwise. Although in the other part of the district no highway rate but a general rate has been assessed, it must be obvious to any one that the amount of that rate must generally depend upon the amount of the cost of repairs. In making out the district rate the authority must have an item referring to the highway rate; but, although it is not in terms a highway rate, it is in substance equivalent to a highway rate, and with regard to that there is no limitation. It is nevertheless said that the same authority when acting for another part of the district is to be subject to the limitation imposed by the Highway Act, the effect of which contention would be that it can assess a rate of 3*s.* 4*d.* in the pound and more upon the inhabitants in one part of the same district, but that in the other part repairs to an extent greater than 2*s.* 6*d.* in the pound could not be done unless the consent of the inhabitants has been obtained. That would be a strange piece of legislation; but, further, the local authority has large powers as to making district rates, and is a totally different class from the former surveyors of highways. A good reason therefore exists why the Legislature should not have imposed the same restriction upon the authority as upon the old surveyors of highways. The words "as surveyor of highways," in section 216, sub-section 2, do not refer to the Highway Acts, but only to a part of the character of the local board acting under the Public Health Act, namely the character of surveyors of highways. I think that my reasons are substantially the same as those given by the Court below, with whose judgment I agree.

BOWEN, L.J., concurred.

Appeal dismissed.

Solicitors—Emmett & Co., agents for Wavell & Co., Halifax, for appellants; Bower, Cotton & Bower, agents for J. W. Longbottom, Halifax, for respondents.

1884. March 7, 8, 14. May 3. THE QUEEN (*on the prosecution of John Abbott*) *v.* THE COMMISSIONERS OF SEWERS FOR THE LEVELS OF FOBBING.

Sewers, Commission of—Liability to repair ratione tenuræ—Extraordinary Storm — Presentments — Orders — 3 & 4 *Will.* 4. *c.* 22. *ss.* 13 *and* 46.

The prosecutor was the owner of certain low-lying lands situate on the Essex shore of the River Thames and protected from inundation by an ancient sea-wall which had been maintained and repaired by his predecessors in title from time immemorial. The lands and sea-wall were within the jurisdiction of the defendants, who were the commissioners of sewers for the district. Previous to the 18*th of January*, 1881, *the wall was in good repair and in a proper condition to resist the flow of ordinary tides and ordinary weather; on that date there occurred an extraordinary high tide and storm, by which serious breaches were caused in the wall. The marsh bailiff thereupon ordered the prosecutor to execute certain repairs to the wall, which he did, and at courts of sewers held subsequently the commissioners ordered the prosecutor to do certain further repairs also rendered necessary by the storm of the* 18*th of January*, 1881. *These latter orders, which purported to be founded on general presentments of liability made twenty years previously, were also complied with by the prosecutor. The prosecutor having sued out a writ of mandamus to the commissioners to levy a rate in order to reimburse him the expenses so incurred, on the ground that he was only liable for repairs rendered necessary by ordinary weather, the commissioners contended that the plaintiff's liability extended to all repairs, whether caused by ordinary or extraordinary weather, and in support of their contention produced from the records of the commission certain presentments, orders, and other documents relating to the district and sea-wall:*— Held, *that the burden of proof was on the defendants; and (drawing inferences of fact) that the evidence did not establish such extraordinary liability on the part of the prosecutor; and that, as he was not in default at the time the breaches in the wall were caused, he was not bound to repair.* Held *further, that with regard to the repairs executed on the order of the marsh bailiff, the plaintiff was entitled to a mandamus to reimburse him the cost of the expenses thereby incurred; but that he was not entitled to a mandamus to be reimbursed the expenses incurred by the repairs executed on the orders of the commissioners, as those orders were equivalent to a verdict found after trial of a presentment, and, until set aside, the prosecutor was bound by them.*

Semble,—*That a general presentment of liability to repair where no default is alleged is invalid, and not warranted by sections* 13 *or* 46 *of* 3 & 4 *Will.* 4. *c.* 22.

Mandamus to the commissioners of sewers for the levels within the limits of the parish of Fobbing and certain other parishes in the county of Essex, commanding them to reimburse one John Abbott the expenses incurred by him in repairing the damage done to the sea-wall fronting Curry Marsh Farm by the storm of the 18th of January, 1881, and all expenses incurred in complying with the orders of the said commissioners made on or about the 15th of February, 1881, and the 9th of March, 1882, in that behalf, and to make and levy such rates and do all such acts as might be necessary for such reimbursement; and it was further ordered, by consent of counsel on both sides, that a Special Case should be stated on the *mandamus*. At the same time it was agreed between the parties that an application by the prosecutor to bring up the orders of the 15th of February, 1881, and the 9th of March, 1882, by *certiorari*, in order that they might be quashed as being invalid, should stand over till after the argument of the Special Case.

Special Case.

1. The said John Abbott (hereinafter called the prosecutor) is the owner of certain freehold lands and hereditaments in the parish of Stanford-le-Hope in the county of Essex, comprising about 122a. 1r. 13p., and known as Curry Marsh Farm. The said land and hereditaments are situate on the Essex shore of the River Thames, in Sea Reach, and form part of the levels within the limits of the parishes

of Fobbing, Corringham, Stanford-le-Hope, Mucking, Laindon, Dunton, Little Warley and Vange, and they are within the jurisdiction of the said commissioners of sewers, who are appointed by Her Majesty's Commission of Sewers, issued for the limits of the said parishes on the 19th of November, 1860, under the Great Seal of Great Britain, pursuant to the statute relating to sewers.

2. Similar commissions have from time to time been issued for a considerable number of years past to the commissioners for the same district. The records of the commissioners begin from the year 1729. It is not known when the first commission for the district was issued. The commission of the 19th of November, 1860, has continued in force to the present time under the provisions of the Land Drainage Act, 1861 (24 & 25 Vict. c. 133. s. 14).

3. The said levels are bounded on the south by the River Thames. All the lands within the said levels, comprising in extent about 3,442 acres, lie below the level of the river at high water, and are protected from inundations at every flood-tide by sea-walls constructed for that purpose. Of the 3,442a., 2,592a. 2r. 12p. are protected by the sea-wall along the length of the southern boundary of the levels of which the Curry Marsh wall forms part. Some part of the said lands is owned by persons who have no frontage to the river and have no sea-walls on or abutting on their own land, but are protected by the sea-walls on or fronting the lands of the others. The sea-walls are ancient, and the date when they were first constructed is not known.

4. The evidence as to the liability of owners of lands alongside the river to repair the sea-walls fronting their respective lands will be found set out on paragraphs 33 to 52 of this Special Case.

5. One of the said sea-walls fronts Curry Marsh Farm. The owners of that farm who preceded the prosecutor from time to time repaired the said wall. The prosecutor bought under a condition of sale which indicated a liability to maintain and repair the sea-wall in question (1). There was no evidence that repairs were ever done to the said wall otherwise than by or at the expense of the owners of Curry Marsh Farm.

6. At a Court held by the commissioners on the 18th of August, 1880, their then marsh bailiff reported that all former orders of the commissioners had been complied with, and at a Court held on the 26th of January, 1881, he stated that he had, on the 14th of January, 1881, inspected the sea-walls throughout the level, and that they then were (except part of a sea-wall not fronting Curry Marsh Farm) in a proper state to resist ordinary tides. In fact, at the time of the happening of the storm hereinafter mentioned, the wall fronting Curry Marsh Farm was in good substantial repair and in a proper condition to resist the flow of ordinary tides and the force of ordinary storms. There was at the time of the said storm no default on the part of the prosecutor as regards the state of repair of the said sea-wall, unless it was a default on his part that the wall was not, as was proved by the event, sufficient to keep out the water on the said 18th of January, 1881.

7. On the 18th of January, 1881, there occurred a concurrence of storm and high tide, which was found as a fact for the purpose of the case to have been extraordinary. The sea-wall fronting Curry Marsh, and almost all the sea-walls on the banks of the Thames in that neighbourhood, were breached by the water from the river, which flowed through and over the walls of the level generally, and submerged a large portion of the lands usually protected by the walls.

8. In consequence of the damage to and the destruction of part of the said wall fronting Curry Marsh, and of the apprehended recurrence after a short interval

(1) Ninth condition of sale under which the prosecutor bought:—"The property is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all chief and other rents, rights of way, water and other easements (if any) charged or subsisting thereon, and to such liability to repair, maintain and cleanse the river-wall, sluices, creeks, drains and watercourses bounding or intersecting the property as the property may be subject to, or by prescription or otherwise, but the vendor shall not be required to shew the nature or extent of such liability, or to furnish any other information with reference thereto."

of unusually high tides, the marsh bailiff, by direction of the clerk to the commissioners, gave notice to the prosecutor that it was necessary that measures should be at once taken for the repair of the said sea-wall. Such measures were accordingly taken by the prosecutor, and previously to the 15th of February, 1881, he had expended on repairing of the said wall a sum amounting to 3,014*l.* 1*s.* 8*d.*

9. On the 26th of January, 1881, and the 15th of February, 1881, Sessions and General Courts of Sewers were held by the commissioners (2), and at the Court of the 15th of February, 1881, an order was made on the prosecutor to do certain repairs to the wall (3).

(2) The record of the proceedings at these Courts contained a statement of the damage done to the sea-walls and farms, the report of the engineer and marsh bailiff thereon, an estimate of the cost of repair, and the orders of the commissioners on the several parties who had been found liable by a presentment of the 1st of August, 1861. The presentment is set out in note (3).

(3) This order was founded on the presentment of the 1st of August, 1861, and was made on the prosecutor as owner of the farm and lands mentioned in that presentment. The following was the presentment referred to:—

"1st August, 1861.—At a Session and General Court of Sewers then held for the said levels—

"The jurors aforesaid, upon their oath aforesaid, do further say and present that the several persons and bodies corporate mentioned and described in the second part of each of the schedules hereunder written or hereunder annexed, being

10. Subsequently to the service upon him of the said order the prosecutor con-

the owners of the several lands and hereditaments set opposite to such their respective names and descriptions in the second part of each such schedule, and their ancestors and predecessors, owners of the same lands and hereditaments, have from time to time immemorial been used and accustomed to support, maintain and repair, and of right ought to have supported, maintained and repaired, at their respective costs and charges, the several respective quantities of walling within the limits and jurisdiction aforesaid mentioned, and set forth in the second part of the same several schedules opposite their respective names and descriptions of the said several persons and bodies corporate by reason of the tenure of their said respective lands and hereditaments, and that the said several persons and bodies corporate named and mentioned in the same part of the said several schedules respectively are now the owners of the lands and hereditaments therein set opposite to such their respective names and descriptions, and by reason of the tenure of the same lands and hereditaments respectively are now liable, and ought of right, to support, maintain and repair, and keep in good and sufficient repair, at their own respective costs and charges, the several and respective quantities of walling within the limits and jurisdiction aforesaid mentioned and set forth in the said second part of the several schedules respectively opposite their respective names and description, and at the respective parts and places therein also mentioned and described, so as to prevent the influx of the water from the rivers and creeks surrounding and near to the levels aforesaid (in all which said rivers and creeks the tides and the water of the sea do flow and do re-flow)."

The Second Part of the First Schedule.

Owners	Occupiers	Description of Lands	Quantity of Land	Description of Walling
	A. R. P.		A. R. P.	
Robert Warton, junior, esquire, and the London, Tilbury & Southend Railway Company and the Thames Haven Dock and Railway Company.	The said Robert Warton . . 9 3 9 The said first-mentioned company . 8 0 29 The said last-mentioned company . 0 0 10	Part of certain marshes called Curry Marshes, in the parish of Stanford-le-Hope.	107 0 8	The whole extent of walling commencing at the centre of Curry Fleet, and bounding the said lands towards the River Thames and Salt Creek, and terminating at the southern corner of a marsh called Skirts, belonging to the governors of Sir John Hawkins' Hospital, Chatham, and containing in length one thousand five hundred and eighty-three yards.

Schedule.

"And the said presentments being read and considered by the Court, it is ordered that the clerk to this Court do cause due notice to be given to the several parties interested of the liabilities with which they respectively stand charged in and by the said presentments, and that, if they think themselves aggrieved, they may traverse the same at the next adjourned Court to be holden for the levels aforesaid, on Thursday, the seventeenth day of October next, at one of the clock in the afternoon, at the George Inn, Orsett, and that no traverse will afterwards be received."

tinued the works which he had before commenced, and by the 18th of August, 1881, all the works required by the said order to be done had been done by him to the satisfaction of the marsh bailiff and of the engineers of the commissioners, with the exception of a small portion at the western corner. The cost of the repairs up to this date is to be taken at 5,752*l.* 10*s.* 6*d.* Work was subsequently done by the prosecutor to the portion of the western corner, and that portion was in course of completion when the further slip happened as hereinafter mentioned.

11. The whole of the work done and expense incurred, as mentioned in paragraphs 8, 9 and 10, was rendered necessary by the extraordinary storm and high tide of the 18th of January, 1881.

12. The prosecutor did not appeal from the order of the 15th of February, 1881, nor did he make any protest against his liability to do the same work without reimbursement for the costs thereof.

13. In the months of January, February, and March, 1882, the part of the same wall opposite the farm buildings of Curry Marsh farm subsided for a length of about 300 yards. This part had been breached on the occasion of the storm of the 18th of January, 1881, and had been repaired as before mentioned. The subsidence did not extend to the portion at the western corner mentioned in paragraph 10 as incomplete.

14. The nature of the subsidence, which was gradual, was as follows:—In January, 1882, slight subsidence and cracks in the top of the wall were observed, shewing that movement was going on. Proper temporary measures to prevent further mischief were had recourse to by the prosecutor, but the subsidence continued, and on the 8th of March, 1882, the said portions of the wall subsided altogether. In the language of the sea-wallers, the wall sat down bodily, kicking out at the toe of the wall into the river the stuff of which the core of the wall was composed.

15. The immediate cause of the subsidence was the giving way of a stratum of soft mud, which, when borings were made after litigation had arisen or was imminent between the prosecutor and the commissioners, was found to underlie the wall. But what caused this stratum to give way after supporting the wall for so many years was matter of dispute between them, and much scientific and other evidence on the subject was given.

Paragraphs 16 to 22 contained the evidence adduced to account for the subsidence of the wall, and the contention of the prosecutor on the one hand and the commissioners on the other as to the cause of subsidence.

23. Neither party proved their contention, nor, so far as could be judged, was either contention capable of proof; nor was matter of conjecture or inference to be drawn from the facts and dates.

24. The existence of the mud must always have made the place a dangerous one for a wall, but no evidence was given of any circumstances from which it ought to be inferred that if the storm of the 18th of January, 1881, had not taken place, the wall, as it then existed, would not have continued to stand till the present day, or that the work and expenses mentioned in paragraphs 8, 9, 10 and 27 would have been necessary.

25. The nature of the soil under the wall could not, till the subsidence began, have been discovered without boring, nor would it be apparent to persons making an examination of the wall in the usual and proper way for the purpose of seeing if it required ordinary repairs.

26. On the 9th of March, 1882, the commissioners held a Session and General Court of Sewers. The prosecutor, who had notice of the holding of the Court, attended with his solicitor, and submitted that the very heavy costs of the works necessitated by the storm of the 18th of January, 1881, ought to be borne by the level, and he applied to the commissioners to make a rate for this purpose, but he did not then make any formal demand on them to do so; and they at such sessions made a further order on him to repair the wall (4).

(4) This order was expressed to be founded on presentments of the 1st of August, 1861 (see note (3)), and the oath of surveyor and of marsh bailiff as to the required repairs. It was ordered that the prosecutor repair the wall in question before the 10th of July next, under a penalty of 200*l.*, and in default the surveyor

27. The subsidence of the wall was such as to endanger the lands of the prosecutor, the lands of other persons lying within the levels, and the public safety, and the prosecutor before attending the said Court had instructed his engineer to see to the state of the wall. The repairs required to be done by the said order of March, 1882, as varied by agreement as mentioned in paragraph 28, were done by the prosecutor after giving notice to the commissioners that he thereby in no way prejudiced his right to appeal against the said order, and that he proposed to claim reimbursement for the outlay. In complying, or endeavouring to comply, with such order, he expended a sum which is to be taken at 6,972*l.* 16*s.* 10*d.*, which is in addition to the sum mentioned in paragraph 10 of this Case.

28. After the order mentioned in paragraph 26, and after the nature of the soil had been investigated, and after the order for the writ of *mandamus* to issue had been made, it was agreed between the prosecutor and the commissioners, without prejudice to their respective legal positions, that it would be less difficult and less costly, and more secure, to build an inset curvilinear wall more inland, than to further attempt to reinstate and maintain the wall on the exact site of the portion which had subsided. And it was agreed that the prosecutor should build such inset wall, and that for the purpose of this case the cost of so doing should be treated as part of the costs of repairing the wall pursuant to the said order. The said inset wall has been so built, and the cost thereof has been 3,300*l.* 6*s.* 10*d.*, or thereabout, which sum forms part of the sum of 6,972*l.* 16*s.* 10*d.* mentioned in paragraph 27.

30. On or about the 1st of April, 1882, the prosecutor, by a demand in writing, bearing date the 31st of March, 1882, addressed to the commissioners, and to certain of them by name, required the commissioners to reimburse him for his expenditure in repairing the damage to the sea-wall by the extraordinary storm and unusually high tide of the 18th of January, 1881, and for the money expended and to be expended by him in complying with the orders of the 15th of February, 1881, and the 9th of March, 1882, and to make a rate or rates for that purpose, and to take all such steps as might be necessary for charging the money so expended and to be expended rateably on the lands benefited thereby, and he requested the commissioners to summon a Court for the said purpose. The commissioners held a Session and Special Court of Sewers on the 18th of April, 1882, for the purpose of taking into consideration the demand of the prosecutor; and at the said Court the prosecutor attended by his solicitor, and made a formal demand, which the commissioners refused to comply with. A copy of the record of the proceedings of the said Court was set out in the appendix.

31. On the 1st of May, 1882, the rule *nisi* for a *mandamus*, which was afterwards made absolute on the 9th of June, 1882, was obtained by the prosecutor.

32. On the 1st of June, 1882, he gave notice of appeal to the Midsummer Quarter Sessions for the county of Essex against the order made on the 9th of March, 1882, which appeal has from time to time been respited pending the decision of this Special Case.

33. An examination of the earliest records of the commissioners shews the following facts:—

34. Between the year 1729, being the date of the earliest record of the commissioners now forthcoming, and the year 1831, there were no presentments of juries finding specially any custom or prescription as to the repair of the walls, and no presentment stating in words what was the liability of the frontagers—that is to say, the persons on whose lands the sea-walls abutted. The usage was for a jury to view the walls a few days before the meeting of the Court of commissioners, and to present at such Court the repairs which they found at such view to be required, specifying, in the case of each work, a penalty in case the work should not be done. At the Court such presentments were made orders of the Court. The presentments were in the form of which the following is a specimen:—

"That A B do back and cope a hundred

and marsh bailiff do execute the repairs, and report to the Court the expense incurred.

rods of their wall by Christmas next on penalty by the rod sixteen shillings."

The orders followed the form of the presentments.

35. The records shew instances of orders on all the owners within the levels whose lands were bounded by the sea-wall, and there is nothing in them to indicate any difference in the extent of the liability of the owners of the different lands so bounded as to the repair of the wall bounding their respective lands.

36. In case of emergency the marsh bailiff was empowered to do the work, but the amount expended by him was claimed as a debt due from the owners to the commissioners, and the records shew instances of the marsh bailiff recovering sums expended by him by distress from the owners who were liable to repair. In some cases it does not appear from the records whether the money expended was claimed or recovered or not, but there are no cases in which it appears it was not so claimed, or that any such claim was contested. From the small amount of the rates levied, it is apparent that no extensive repairs to the wall can have been done at the expense of the level.

37. Rates were made at the Courts. They were usually made for the general purposes of the expense of the commissioners, but sometimes for special purposes.

37*a*. It was agreed between the parties that reference might be made to the records of the commissioners upon the argument for the purpose of further explaining or illustrating the matters referred to in paragraphs 33 to 37.

38. No instance appears in the records of a rate made for the special purpose of paying the expenses of repairing walls or of reimbursing any frontager for expenses incurred by him in repairing walls.

39. Except so far as the facts and documents or extracts mentioned in this Special Case prove or warrant an inference to the contrary, there is no evidence to shew that any of the repairs ordered to be done were other than ordinary repairs, or that any extraordinary repairs or that any extraordinary accident happened to the walls before the storm of the 18th of January, 1881.

40. On the 31st of January, 1791, the then existing commission expired. A petition was presented by the commissioners to the Lord Chancellor in the usual way for a warrant for a new commission. The next commission, though dated the 13th of January, 1791, was not issued till the 15th of August, 1791.

41. There are found in a room at the office of the clerk to the commissioners, which is, and has been for many years, devoted to the custody of the books and documents of the commissioners, the following papers relating to the last-mentioned commission, the admission in evidence of which papers in the present case is objected to by the prosecutor. The first is the draft or copy of an affidavit in the handwriting of, and purporting to have been sworn by, Edward Gepp, the then clerk of the commissioners, under the expired commission, on the 3rd of March, 1791, for the purpose of obtaining a new commission (5). The second, which was found with it, is a draft or copy of a petition of the commissioners or some of them, dated the 28th of June, 1791. The third is a bill of costs of the said Edward Gepp against the commissioners, for work done in 1791, amounting to 32*l.* 1*s.* 2*d.*, and bearing the indorsement—

"10 October, 1791, allowed.
"R. Baker,
"W. Russell."

R. Baker and W. Russell were, on the 10th of October, 1791, commissioners under the then existing commission (6).

42. At a Court held by the commissioners on the 10th of October, 1791, it was ordered that the marsh bailiff should pay to the said Edward Gepp his bill for soliciting a new commission of sewers for the said levels, amounting to 32*l.* 1*s.* 2*d.*

43. It appears from this order and these documents that the petition for a fresh commission presented to the Lord Chancellor by the commissioners in the usual

(5) This affidavit was to the effect that the last commission had expired, and that by reason of an extraordinary high tide which had occurred in the February preceding, several breaches were made in the walls, and, until a new commission was issued, no orders could be made to enforce the necessary reparations.

(6) This bill of costs consisted chiefly of items of expense incurred in procuring the issue of a new commission.

way was neglected in the Lord Chancellor's office, and a supplemental petition, supported by the affidavit of the said Edward Gepp, was presented by the commissioners, and that the said Edward Gepp was paid by the commissioners for his work and labour in respect of the said affidavit, a petition and a presentation thereof.

44. Search has been made in all reasonable places for the originals of the said affidavit and supplemental petition, but they have not been found.

45. At the Court held on the 10th of October, 1791, mentioned in paragraph 42, about seventy orders for the repair of walls were made. The entry in the book relating thereto can be referred to by either party on the argument of this case.

46. At a Court held on the 5th of December, 1831, a presentment was made respecting the dangerous state of the sea-wall belonging to the Oil Mill Farm, the property of Francis Kensett, upon evidence taken in the presence of the Court and jury. In this presentment the liability of the owner to repair is stated to be by ancient custom. This is the first instance in which there appears any entry upon the records of the commissioners stating in terms the liability of any owner to repair, or the existence of any custom relating thereto (7).

48. The first Court at which any presentment was made, held after the passing of the statute 3 & 4 Will. 4. c. 22, was held on the 26th of February, 1836 (8).

(7) An extract from the records shewing the circumstances under which the presentment was made, the depositions of the witnesses, and the orders of the Court was set out in the appendix. The evidence was to the effect that the then ruinous state of the wall was not occasioned by any extraordinary flood or accident, but by the neglect and default of the said Francis Kensett, and the presentments alleged such default. Further extracts from the records of the commissioners relating to the same farm or part thereof, including entries relating to damage done by unusual high wind and tide, and to a search for precedents of repairing rendered necessary by storms, were also set out, as well as extracts from the records of Courts held on the 18th of July, 1832, and the 13th of July, 1833, were also printed in the appendix, for the purpose of shewing the statement of the customary liability contained therein.

(8) At this Court the jury made a presentment in the following terms :—

49. From that date until the passing of the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), by which commissioners of sewers were made perpetual until superseded, presentments in substantially similar form were made at the commencement of each commission. The Robert Warton mentioned in extract from the schedule to the presentment of the 1st of August, 1861 (3), was the predecessor in title of the prosecutor, and the lands mentioned therein are those referred to in the first paragraph of this Case.

50. In March, 1874, a tide occurred higher than any before then recorded (though lower than the tide of the 18th of January, 1881), and caused serious breaches in the sea-walls of the level. At a Court

"26th February, 1836.

"And the jurors aforesaid, upon their oath aforesaid, further say and present that the several persons and bodies corporate named and mentioned in the said second schedule hereunder written or hereunto annexed, and their ancestors or predecessors, being owners of the several farms and quantities of land within the levels and jurisdiction aforesaid set opposite to such their respective names and descriptions in the same schedule, have, by reason of the said farm and lands so by them respectively owned, and of their being the owners thereof from time immemorial, been used and accustomed, at their own costs and charges, to support, maintain and repair, and the said several persons and bodies corporate so named and described in the said second schedule, by reason of the said farms and lands so by them respectively owned, and of their being the owners thereof, are now liable and ought still of right to support, maintain and repair, and keep in good and sufficient repair, at their own respective costs and charges, the several and respective quantities of walling within the levels and jurisdiction aforesaid mentioned in the said schedule, and situate, standing and being in and upon such their respective farms and lands, so as to prevent the influx of the waters from the rivers and creeks surrounding and near to the said farms and lands (in all which said rivers and creeks the tides and waters of the sea do flow and reflow); and that the several persons and bodies corporate so named and mentioned in the same schedule are now the owners of the particular farms and lands therein also mentioned and set opposite to such their respective names and descriptions, and are situate within the levels and jurisdiction aforesaid, and as such owners, and in respect of such farms and lands, are now liable, and, by reason of such immemorial custom and usage aforesaid, ought of right to repair and keep in good and sufficient repair the said walling, at their own respective costs and charges, in the proportion

held on the 27th of August, 1874, orders were made on all the frontagers in the level (whether the walls fronting their respective lands had been damaged by the tides or not) to raise their walls one foot above the line of the said high tide. These orders were carried out, and the damage to the walls by the said high tide was repaired at the expense of the owners (9).

51. After the storm of January, 1881, orders were made on all frontagers respectively, in a form similar to that of the 15th of February, 1881, before mentioned, to repair the damage caused to their walls by the said storm. These orders were not appealed against, and the work was done at, in many cases, considerable expense. It must not be assumed from this that in some cases the expense to a frontager of repairing his own wall was greater than his contribution to a general rate would have been in case the repairs had all been defrayed out of such rate. No claim to reimbursement has yet been thus made except by the prosecutor. The facts stated in this paragraph are objected to on behalf of the prosecutor as not being admissible in evidence or relevant to this case, and they are stated subject to this objection.

52. During the period to which living memory extends, so far as oral testimony is forthcoming, the walls have always been repaired by or at the expense of the owners of the land on which the walls respectively front, without reimbursement by the commissioners. The market value of the land fronting the river is considerably diminished by reason of the liability to repair.

53. The appendix of this Special Case forms part thereof.

54. The commissioners contend that—

(1) The facts and documents stated or referred to in this Case establish that the prosecutor was under a general liability to repair the sea-wall fronting his land, and that, by reason of such liability, he was bound to do the repairs referred to in the case, although the necessity for such repairs arose from an extraordinary storm, or tide, or any other cause.

(2) That the said facts and documents shew that there was no liability upon the level or any other person to repair the said wall or to reimburse the prosecutor for the whole or any part of the moneys expended by him in such repairs.

(3) That the prosecutor is debarred from obtaining the relief sought for in the present proceedings by the existence of the orders of the 15th of February, 1881, and of the 9th of March, 1882, unless and until they or either of them be varied or reversed by the Quarter Sessions under the provisions of the Land Drainage Act, 1861, s. 47, or otherwise set aside.

55. The prosecutor contends that—

(i) Even if any liability is shewn to him to do any repairs to the sea-wall, such

mentioned and set forth in the same schedule opposite to such names and descriptions respectively, and at the respective parts and places therein also mentioned and described."

A portion of the schedule is here printed as a specimen.

Essex, to wit.

Owners	Occupiers	Descriptions of Lands	Parishes	Quantity in each Parish	Total
				A. R. P.	A. R. P.
William Wingfield, Esq.	John Sylvester	The whole of a certain farm called Shellhaven Farm, situate in the several parishes of	Corringham . .	145 3 15	
			Dunton . . .	67 0 37	
			Little Warley and	65 1 31	
			Fobbing . . .	71 0 19	
William Bromley, Esq.	Henry Anthony Long.	The whole of a certain farm called the Oil Mill Farm, situate in	Fobbing . . .	. . .	349 2 22
					153 0 3
George Spitty . .	The said George Spitty.	Certain marshes called Curry Marshes, situate in	Stanford-le-Hope .	. . .	108 0 8

(9) The orders relating to Curry Marsh were expressed to be made by the commissioners upon reading the presentments of the 1st of August, 1861, and taking depositions of the marsh bailiff and surveyor of reparations in the said walls required by the default of R. Warton. The other orders were in similar form.

liability is at most an ordinary liability to repair by prescription, and does not extend to damage by extraordinary floods or storms, or to reinstating such wall after such damage, but in such case the cost should be borne by the level, according to the statute of Henry 8 as interpreted in *Keighley's Case* (10); and, assuming the prosecutor to be liable in the first instance to pay the costs of such repair and reinstating, he is entitled to be reimbursed.

(ii) If the subsidence in 1882 was not due to the storm of 1881 it was due to a latent defect for which he was not responsible.

(iii) The orders of the 15th of February, 1881, and of the 9th of March, 1882, are not nor is either of them conclusive against the prosecutor, and assuming them to bind him to do the repairs in the first instance they are not inconsistent with his right to be reimbursed.

56. The questions for the opinion of the Court are—

(1) Whether the cost of repairing the sea-wall fronting Curry Marsh subsequent to the 18th of January, 1881, under the circumstances hereinbefore mentioned, or any and what part thereof, ought to be borne by the prosecutor or by the level rateably.

(2) Whether the prosecutor is entitled to be reimbursed by the commissioners the whole or part, and what part, of the said costs, and to have a rate or rates made for that purpose.

(3) Whether in case the prosecutor is not entitled to be reimbursed by the commissioners the whole or any part of the said costs, it is by reason of the orders of the 15th of February, 1881, and of the 9th of March, 1882, or either and which of them.

57. If the Court shall answer either of the first two questions in favour of prosecutor judgment is to be entered for the prosecutor on the Special Case, and such order for a peremptory *mandamus*, or for a reference or otherwise as the Court may direct, is to be made.

If the Court shall answer the first two questions in favour of the commissioners, judgment is to be entered for the commissioners.

If the Court shall answer the third question in the affirmative, the prosecutor is to be at liberty to proceed with his motion for a *certiorari*, and with his appeal to Quarter Sessions, or with either of such proceedings.

Arthur Charles, Q.C. (*Channell* with him), for the prosecutor.

Meadows-White, Q.C. (*Finlay, Q.C.*, and *Kenelm Digby* with him), for the defendants.

The arguments, which turned principally on the evidence set out in the appendix to the Special Case, are substantially set out in the judgment of the Court.

The following authorities were referred to—*Hudson* v. *Tabor* (11), *The Queen* v. *Leigh* (12), *The Queen* v. *Keighley* (10), *The Queen* v. *The Commissioners of Sewers for Somerset* (13), *The Queen* v. *Commissioners of Sewers for Essex* (14), *The Queen* v. *Warton* (15), *The Nitro-Phosphate Company* v. *The St. Katherine's Docks* (16), *Nugent* v. *Smith* (17), *The Queen* v. *Greenhow* (18), *Henly* v. *The Mayor of Lyme* (19), 3 & 4 Will. 4. c. 22. ss. 13, 15 and 47, and 24 & 25 Vict. c. 133. ss. 33 and 47.

The judgment of the Court (20) was (on May 3) delivered by

LORD COLERIDGE, C.J.—The principal question in this case is, whether the prosecutor, who is the owner of certain lands within the jurisdiction of the commissioners on which is a sea-wall, is liable to repair damage done to that wall by the combined effects of storm and high tide which occurred on the 18th of January, 1881.

The burden of proof is on the commissioners, who must establish the extent of the prosecutor's liability, and must then

(10) 10 Coke, 139.

(11) 46 Law J. Rep. Q.B. 463; Law Rep. 2 Q.B. D. 290.

(12) 10 Ad. & E. 398.

(13) 8 Term Rep. 312.

(14) 1 B. & C. 477.

(15) 2 B. & S. 718; 31 Law J. Rep. Q.B. 265.

(16) Law Rep. 9 Ch. D. 503.

(17) 45 Law J. Rep. C.P. 697; Law Rep. 1 C.P. D. 423.

(18) 45 Law J. Rep. M.C. 141; Law Rep. 1 Q.B. D. 703.

(19) 5 Bing. 91; 3 B. & Ad. 77; 1 Bing. N.C. 222.

(20) Lord Coleridge, C.J., and Cave, J.

shew that the damage they allege the prosecutor is bound to repair is damage which falls within the ambit of the liability so established.

The extent of the liability of a frontager to repair a sea-wall, whether arising by tenure, prescription, or custom, can only be ascertained by usage. In this case there is no living testimony as to the usage, but we have been referred to certain documents, from which we have been asked to infer that the liability of the prosecutor, so far as in fact to make him insurer of the wall, is absolute. These documents are presentments of juries and other papers found amongst the papers and books of the commissioners.

The first in date is a copy or draft of an affidavit in the handwriting of and purporting to be sworn by Edward Gepp, the then clerk of the commissioners, on the 3rd of March, 1791, for the purpose of obtaining a new commission in the place of one which had lately expired. It appears that the petition for a fresh commission had been neglected by the then Chancellor, Lord Thurlow, and the commissioners had presented a supplemental petition, supported by the affidavit in question, which alleges that, by reason of the inundation occasioned by the extraordinary high tide which happened on the 3rd of February, several breaches and other injuries had happened to the sea-walls, banks, &c., and that it was absolutely necessary for the safety and preservation of the land and marsh grounds within the levels that immediate attention should be had to the reparation and amendment of the said sea-walls, &c., and that until a new commission was issued no surveys could be taken or orders made to enforce such necessary reparations and amendments. The commission was ultimately issued; and at a Court held on the 10th of October, 1791, about seventy orders for the repair of walls were made. There is nothing in the nature or extent of those repairs (which are of the usual character) to lead to the conclusion that the damage so repaired was other than such as might with ordinary prudence and foresight have been guarded against, and we are unable to infer from the language of the clerk, anxious for the renewal of the commission under which he held his office, that the tide spoken of by him was so high that it could not reasonably have been foreseen and guarded against, or that the damage so repaired was caused without negligence on the part of the frontagers.

In 1831, it appears from a report of one of the commissioners that the marsh bailiff had represented that the sea-wall belonging to the Oil Mill Farm was in an alarming and dangerous state from the neglect of the owner to repair pursuant to a previous presentment, and that in consequence of such neglect serious apprehensions were entertained that a breach and inundation might take place. Thereupon there was a presentment by a jury that the sea-wall in question was in a ruinous and defective state and condition for want of due reparation and amendment thereof, and that such state and condition had arisen from the negligence and default of the owner of the Oil Mill Farm in repairing and amending the same as he ought to have done; and the Court ordered that the works presented to be done by the jury should be made an order and decree of the Court. It appears from a record of the Court of the 13th of July, 1833, that these works were afterwards done by the owners of the Oil Mill Farm; but it is clear from the report, and from the evidence of Richard Mill Dalton given before the jury, that these repairs were rendered necessary by the neglect of the owner, and not by an extraordinary flood or accident, and consequently this presentment is no authority for the existence of any such liability as that now in dispute.

On the 26th of February, 1836, after the passing of the statute 3 & 4 Will. 4. c. 22, there was a general presentment of the jury, which was much relied on by Mr. White (8). This presentment appears to have been made under the combined operation of sections 13 and 46 of that Act; but it does not appear that at this time the sea-wall was out of repair, and we are of opinion that those sections do not warrant a presentment of liability to repair only where the wall is alleged to be out of repair, and that if the wall is out of repair in part it only warrants a general presentment of such parts as may be out of repair. There is no power to traverse a presentment where no default is alleged,

and it is obvious that a trial of a presentment where no default was alleged would impose an intolerable burden on the person supposed to be affected by such presentment, as it might happen that no default would occur while they continued owners. We are also of opinion that, assuming the presentment to be good, it does not warrant the conclusion that the liability to repair extended to damage done by the act of God.

In 1843, the wall upon the Oil Mill Farm was again reported to be in a very dangerous and alarming state, the same having been recently in part much reduced in height and otherwise damaged by an unusual high wind and tide, in consequence whereof imminent danger was apprehended to the levels; and at a Court subsequently held it was found that the wall in question, at a part called the Steep Joe Point, was in a ruinous and defective state and condition for want of due reparation and amendment thereof, and by reason of the default of the owners in not having repaired and amended the same; and it was ordered that the wall should be repaired at the expense of the owners.

It appears from the clerk's bill of costs that, previous to this order being made, a question had arisen whether the proprietors of the wall were liable to repair it after a storm if it had previously been in a sufficient state to resist the tide, &c.; but as it appeared that the wall in question was not previously in a fit state to resist ordinary occurrences, the question was not gone into, and it follows that the records of 1843 do not establish the existence of any liability such as that now contended for. The entries in the bill of costs are, however, strong proof that the presentment of 1826 was not in 1843 understood to have the effect now suggested.

The records of the Courts held on the 8th of June, 1854, do not carry the commissioners' case any further. On the 1st of August, 1861, another general presentment (3) was made, which is open to the objections already taken to that of 1836, and to which, therefore, the observations previously made equally apply.

On the 6th of August, 1861, the Land Drainage Act, 1861, was passed, which by section 33 enacts that commissioners of sewers, acting within their jurisdiction, may, without the presentment of a jury, make any order in respect of the execution of any work, the levying of any rate, or doing any act which they might but for this section have made with such presentment, subject to this proviso—that any person aggrieved by any such order made by the commissioners without the presentment of a jury may appeal therefrom in manner hereinafter mentioned.

In March, 1874, a tide occurred higher than any before then recorded (though lower than the tide of the 18th of January, 1881), and caused serious breaches in the sea-walls of the level. At a Court held on the 27th of August, 1874, orders were made on all the frontagers in the levels (whether the walls fronting their respective lands had been damaged by the tide or not) to raise their walls a height 1 foot 6 inches above the line of the said high tide. It is obvious that as soon as it was shewn by experience that a tide of the height of that recorded in March, 1874, might occur, the danger of its recurrence was a danger that could be foreseen in the future and might be guarded against whether it could have been foreseen in the past or not, and consequently that the owners of the sea-walls were bound to foresee and provide against it. It is also found in the Case that the damage to the walls occasioned by this tide was repaired at the expense of the owners; but we have no such evidence of the height of the tide, or of the nature or extent of the damage done by it, as in our opinion would justify us in finding as a fact from the usage proved that the owners of this sea-wall are bound to repair damage done by the act of God.

Mr. White relied upon the fact that, so far as can be gathered from the records, which extend back to 1729, no repairs had been done at the general expense of the level from that time to the present; and he contended that there must have been damage caused by the act of God during that period, which must therefore have been repaired by the frontager; but it seems equally clear from the records that no repairs have been done by the frontagers of such a nature as to satisfy us that they

were rendered necessary by the damage arising from the act of God; and the expression itself being confined to events which cannot be foreseen, or which, if they can be foreseen, cannot be guarded against, points to events which are *prima facie* likely to be of very unusual occurrence; and it is quite as reasonable to conjecture that nothing of the kind has happened between 1729 and 1881 as to suppose that it has taken place and has been repaired by the frontagers without leaving any trace upon the records. Moreover, we ought not to presume anything against the prosecutor, who is virtually defending himself from an attempt to impose upon him a large and indefinite liability, and we ought to be satisfied with nothing less than would have satisfied a jury of reasonable men upon the trial of a traverse of a presentment. As for the argument attempted to be drawn from the fact that the prosecutor did not appeal against the first order made upon him, and that the other frontagers obeyed the orders made upon them to repair damage caused by the same storm, we only notice it to shew we have not overlooked it.

In our judgment, the commissioners have failed in proving that the prosecutor is liable to make good all damage, however caused; and we find as a matter of fact that the prosecutor is only liable to make good damage which can in some way or other be traced to his or his predecessors' negligence.

The next question is whether the commissioners have proved that the damage in this case arose from the prosecutor's negligence: for here, as before, the onus of proof is on the commissioners, as it would be if there had been a presentment of a jury which the prosecutor had traversed.

It cannot be seriously contended that the damage in this case can be traced to any such negligence. It is found as a fact that before the storm the wall was in good substantial repair and in a proper condition to resist the flow of ordinary tides and the force of ordinary storms, and that on the 18th of January, 1881, there was a concurrence of storm and high tide which was extraordinary. As to the subsidence of the wall, the cause of it is in dispute, but whether the contention of the prosecutor or that of the commissioners be adopted, it is not proved that the subsidence could have been foreseen, or that if foreseen it could have been prevented, and the Case expressly finds that no evidence was given of any circumstance from which it ought to be inferred that if the storm of the 18th of January, 1881, had not taken place the wall as it then existed would not have continued to stand to the present day. It is also a circumstance not without weight that previous to the storm in question the commissioners whose duty it is to watch over the sea-wall in question did not suggest that anything was required to be done to the wall to enable it to withstand the force of tides and storms. We are therefore compelled to come to the conclusion that the damage to the wall mentioned in the Case was not such as the prosecutor was bound to repair.

There is, however, another question yet to be disposed of. It has been contended that, assuming the prosecutor was not bound to repair the damage in question, yet, as he has in fact repaired it under two orders of the commissioners, he is not entitled to a *mandamus* to the commissioners to reimburse so long as these orders stand. One of them is under appeal, and the other will be brought before this Court on *certiorari*, and it may be that both will be upset; but the point we have now to dispose of is whether the *mandamus* can go while these orders stand.

Now by section 33 of the Land Drainage Act, 1861, already quoted, the commissioners acting within their jurisdiction may without a presentment make any order to execute any work which they might have made with such presentment. The commissioners did by the orders in question, made respectively on the 1st of February, 1881, and 9th of March, 1882, order the prosecutor to do certain repairs, which he has done. It was not contended by Mr. Charles—nor, in our opinion, could it have been successfully contended—that the commissioners in making these orders were acting outside their jurisdiction: for it is clear that if a jury had found as a fact that Mr. Abbott's liability was of the extensive nature contended for by the commissioners, they could and ought under

the old system to have made a presentment which would have warranted the orders in question. The extent of the liability of the frontager is one of the matters which would necessarily have had to be proved before a jury on the trial if the presentment had been traversed, and in *The Queen* v. *Leigh* (12) the Court of Queen's Bench granted a new trial because the Judge had misdirected the jury upon this very question in the trial of a presentment which had been removed into that Court by *certiorari*.

Mr. Charles did not contend before us that the orders were bad (not that he admitted them to be good, but that the argument on this point was reserved for this Court when the two orders are before it on *certiorari*); but he submitted that, notwithstanding the orders, Mr. Abbott was entitled to dispute his liability, and to have this *mandamus* made absolute to reimburse him for the expense he has incurred in obeying the orders.

Under the former system the question of the liability of the frontager was put in issue by a traverse of the presentment, and after the trial of the presentment, and verdict found against the frontager, it is impossible to conceive that, so long as that verdict stood, the frontager could dispute the liability so found against him. Mr. Charles's industry could not produce any authority to that effect, and it would be strange if the elaborate machinery of a presentment by a jury, a traverse of that presentment, and a finding of a jury upon such traverse, had been absolutely of no effect. Nor is it possible to understand why a frontager who had not traversed the indictment, and had thereby confessed it, should be in a better position than one who had traversed it unsuccessfully.

The order of the commissioners is, by the section already quoted, to have the same effect as if it had been preceded by the necessary presentment, and an appeal to the Quarter Sessions is substituted for the traverse to the presentment. In our judgment the prosecutor is bound to these orders until they have either been reversed on appeal or quashed by this Court on *certiorari*. We are therefore of opinion that, although the liability of the prosecutor does not extend so far as to make him liable to repair damage caused as this was, yet, so long as the orders in question stand, he is not entitled to a *mandamus* to reimburse him the expenses he has incurred in obeying them.

It appears, however, that the repairs mentioned in paragraph 8 of the Special Case were not done under the order of the commissioners, but by the direction of the marsh bailiff; and as to the expense of doing these last-mentioned repairs, we hold, following *The Queen* v. *The Commissioners of Sewers for Somerset* (13), that the level must be at the cost of making them good, and that the prosecutor is to that extent entitled to his *mandamus*.

Judgment accordingly.

Solicitors—Thomson, Son & Brooks, for prosecutor; Paterson, Snow, Bloxam & Co., agents for Gepp & Son, of Chelmsford, for defendants.

1884. May 26.

CUNDY *v.* LE COCQ.

*Licensing Acts—"Selling Liquor to a Drunken Person"—No Indications of Insobriety—Mens rea—*35 & 36 *Vict. c.* 94. *s.* 13—"*Drunken person.*"

The offence of a licensed person "selling any intoxicating liquor to any drunken person," under section 13 *of the Licensing Act,* 1872, *is committed by a sale to a person who is drunk, although he shew no indications of insobriety and neither the licence-holder nor his servants notice that he is drunk.*

Case stated by the stipendiary magistrate for West Ham upon a complaint that the appellant, being a holder of a licence for the sale of intoxicating liquors, sold intoxicating liquor to a drunken person.

It was proved that there had been a sale of intoxicating liquor on the licensed premises, and that the person served was drunk. It was further proved in answering the complaint that neither the appel-

lant nor his servants had noticed that the drunken person was drunk, and that the drunken person had while on the licensed premises been quiet in his demeanour and had done nothing to indicate insobriety. The evidence before the magistrate went to shew that there were no apparent indications of intoxication. The magistrate decided that it was unnecessary to determine whether there had been on the part of the appellant or his servants a knowledge or means of knowledge of the drunkenness of the drunken person, and convicted the appellant, fining him 2*l.* and costs.

Besley, for the appellant.—The conviction is under section 13 of the Licensing Act, 1872, which provides that "if any licensed person permits drunkenness or any violent, quarrelsome or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty." The case finds the sale and that the purchaser was drunk, but that there were no apparent indications of insobriety. In other words, the licence-holder did not know and had not the means of knowing that his customer was drunk. The magistrate finds in fact that there was no *mens rea*, which is essential to a criminal offence, whether expressly made part of it by the Act of Parliament or not.

He cited *Somerset* v. *Hart* (1), *Mullins* v. *Collins* (2) and *Hearne* v. *Garton* (3).

R. S. Wright (*Danckwerts* with him), for the respondent.—The offences in this Act are studiously varied, and the word "knowingly" contained in other offences is purposely omitted from this one. In *The Queen* v. *Bishop* (4) it was held that, in order to constitute the offence of keeping lunatics without a licence, it was immaterial whether the defendant knew that the inmates of his house were lunatics. It is much more difficult to know lunacy than drunkenness. Similarly, in *The Queen* v. *Prince* (5), it was held that, to constitute abduction, it was not necessary that the defendant should know that the girl was under the prescribed age.

He cited also *The Attorney-General* v. *Lockwood* (6), *Roberts* v. *Egerton* (7), *Fitzpatrick* v. *Kelly* (8) (the last two cases under the Adulteration Act), *The Queen* v. *Wooodrow* (9), *The King* v. *Marsh* (10) and *The Queen* v. *Forbes* (11).

Besley, in reply.

STEPHEN, J.—I am of opinion that this conviction must be affirmed. The question lies in a very small compass, and turns on the words "if any licensed person sells any intoxicating liquor to any drunken person he shall be liable to a penalty." Do these words imply that the offender must know or have reasonable means of ascertaining that the customer is drunk, or do they contain an absolute prohibition against selling intoxicating liquors to a drunken person, whether the licensed person does or does not know that his customer is drunk? There is, in my opinion, an absolute prohibition of the sale, irrespectively of the knowledge of the licence-holder. I arrive at this conclusion by a comparison of the different sections under the head "Offences against public order" in the Act. The 16th section makes it an offence if any licensed person "knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty." Knowledge is in that case naturally an element of the crime, and so in the other offences in which the word is used. The object of not putting in the word "knowingly" in the offence in question is, that it is a great temptation to publicans to sell intoxicating liquors to drunken people, and the Legislature intended the publican to take the responsibility of the fact whether his customer is drunk or sober; and if it was unknown to the publican that the

(1) *Ante*, p. 77.
(2) 43 Law J. Rep. M.C. 67; Law Rep. 9 Q.B. 292.
(3) 28 Law J. Rep. M.C. 253.
(4) 49 Law J. Rep. M.C. 45; Law Rep. 5 Q.B. D. 259.
(5) 44 Law J. Rep. M.C. 122; Law Rep. 2 C.C.R. 154.
(6) 10 Mee. & W. 464.
(7) 30 Law Times, 633.
(8) 42 Law J. Rep. M.C. 132; Law Rep. 8 Q.B. 337.
(9) 15 Mee. & W. 404; 16 Law J. Rep. M.C. 122.
(10) 2 B. & C. 717.
(11) 10 Cox C.C. 362.

customer was drunk, the fact is matter for mitigation of punishment only. Reliance is placed on behalf of the defendant on the well-known maxim about the guilty mind. It is difficult to say when this maxim first came into use. I have traced it almost to the time of the Conquest, and in days when law was in an undefined state it was in full force and application. But it has not now so wide a reputation as it used to have, and the last bit left of the doctrine of the *mens rea* raises questions in what cases knowledge is essential to a criminal offence. The old brief statutes and dearth of cases are now superseded by modern statutes and cases, and in many instances it has been held that guilty knowledge is not essential to the definition of statutory crimes. *The Queen* v. *Prince* (5) is one example of these cases, and *The Queen* v. *Bishop* (4) is another. The Act of Parliament must be looked at to see what knowledge is necessary to complete the criminal act. The object of this section was, I think, to make it a difficult thing for publicans to supply liquor to drunken men, and if they do so by mistake they must take the consequences. This decision must, in my opinion, be upheld.

MATHEW, J.—I am of the same opinion. The language appears to me plain, and the case clearly within the section. The argument put forward as to the *mens rea* is an argument that the word "knowingly" must be put into every offence in an Act of Parliament.

Solicitors—Peckham, Maitland & Peckham, for appellant; Solicitor to the Treasury, for respondent.

1884. June 10. } THE QUEEN *v.* HASLEHURST.

Poor Law—Statutes 4 *&* 5 *Will.* 4. *c.* 76, *and* 31 *&* 32 *Vict. c.* 122—*Order of Local Government Board of* 1867—*Workhouse —Payment of Roman Catholic Clergyman—Power of Guardians—"Person in Holy Orders."*

By an order of the Local Government Board, dated the 19*th of August*, 1867, *it is provided that guardians may employ such persons as they shall deem requisite in or about the workhouse or workhouse premises, or on the land occupied for the employment of the pauper inmates, or otherwise in or about the relief of the indoor poor, as shall appear to them to be suitable*:—Held, *that under the terms of the above order, the guardians were authorised to appoint and pay a Roman Catholic clergyman for the purpose of attending to the spiritual wants of Roman Catholic paupers.*

This was an application for a writ of *certiorari* to bring up a disallowance by the poor law auditor, who had disallowed against Mr. Jones, a member of the Liverpool select vestry (1), certain payments made and sanctioned by him as member of the select vestry for a Roman Catholic priest employed by the vestry for the purpose of giving religious services and instruction to the Roman Catholic paupers and inmates of the workhouse.

It appeared that the appointment of the Roman Catholic clergyman in question had been made by the select vestry some years previous, and that the appointment had been assented to by the Local Government Board (1), and a salary paid from time to time without objection. In 1883, however, the auditor disallowed the amount paid for such salary, on the ground that the Local Government Board had not by law power to authorise the appointment of Nonconformist ministers to attend the poor and to pay them salaries for such attendance (2).

(1) It was admitted that such vestry performed all the functions which would otherwise be performed by the guardians.

(2) The following are the principal sections of the statutes and orders cited during the argument:—

The Queen v. *Haslehurst.*

French (*C. Russell, Q.C.*, with him), in support of the motion.—The auditor's

By 4 & 5 Will. 4. c. 76. s. 19, it is enacted that "no rules, orders or regulations of the said commissioners, nor any bye-laws at present in force or to be hereafter made, shall oblige any inmate of any workhouse to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate. . . . Provided also that it shall and may be lawful for any licensed minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, to visit such workhouse, for the purpose of affording religious assistance to such inmate," &c.

By section 42, the "commissioners may and are hereby authorised by writing under their hands and seal to make rules, orders and regulations to be observed and enforced at every workhouse . . . . for the government thereof . . . . and the preservation therein of good order. . . ."

By section 46, "it shall be lawful for the commissioners, as and when they shall see fit, by order under their hands and seal, to direct the overseers or guardians of any parish or union . . . . to appoint such paid officers with such qualifications as the said commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of the poor . . . . and otherwise carrying the provisions of this Act into execution; and the said commissioners may and they are hereby empowered to define and specify and direct the execution of the respective duties of such officers," &c.

By section 109, the word "officer" shall be construed to extend "to any clergyman, schoolmaster, . . . or any other person who shall be employed in any parish or union in carrying this Act or the laws for the relief of the poor into execution."

By 7 & 8 Vict. c. 101. s. 74, entitle "An Act for the further amendment of the laws relating to the poor in England," the term "minister," as used in that Act, is to be construed to mean and include every person in holy orders, and also every person teaching or preaching in any congregation for religious worship whose place of meeting is certified and recorded according to law.

Under an order issued in 1843, in pursuance of the provisions contained in 4 & 5 Will. 4. c. 76, with reference to the officers who were directed to be appointed by the guardians, the "duties of the chaplain" were defined to be "to read prayers, to preach a sermon, . . . to examine the children, and to catechise such as belong to the Church of England. . . ."

An order issued by the Local Government Board in 1867 provides that "The guardians may employ such persons as they shall deem requisite in or about the workhouse or workhouse premises, or on the land occupied for the

view was that the power of the select vestry of the board of guardians in respect of chaplains was limited to the appointment of chaplains who were members of the Established Church. It is submitted, however, that the Liverpool vestry and the Local Government Board were right in their view that there is perfect religious equality amongst all denominations in this matter, and that the right of the guardians to appoint a chaplain is not limited to the appointment of chaplains who are members of the Established Church, but applies equally to members of every denomination, when, in the judgment of the guardians, the number of members of each denomination in the workhouse is such as to render it reasonable and right that they should have a member of their own persuasion appointed for the purpose of holding religious services, as well as for the maintenance and discipline of the paupers, a number of whom would, in the absence of such an appointment, have to leave the house and go elsewhere to attend religious services. Under 4 & 5 Will. 4. c. 76. s. 46, the commissioners (whose jurisdiction has since been transferred to the Local Government Board) may direct overseers and guardians to appoint paid "officers" for parishes and unions; and the term

employment of the pauper inmates of the workhouse, or otherwise in or about the relief of the indoor poor, upon such terms and conditions as shall appear to them to be suitable."

Article 2: "So much of any order as would require the guardians to report to this board the appointment, salary, removal or discharge of any such person employed by them as aforesaid, or as would provide for the quarterly or other periodical payment of any such person engaged at daily, weekly or monthly wages, or by the piece or job, is hereby rescinded."

Article 3: "The foregoing articles of the order, except so much thereof as relates to either quarterly or other periodical payments, shall not apply to the following officers and persons—that is to say, clerk to the guardians, chaplain."

By 31 & 32 Vict. c. 122. s. 21, passed in 1868, it is enacted that "every inmate for whom a religious service according to his own creed shall not be provided in the workhouse, shall be permitted, subject to regulations to be approved of or ordered by the Poor Law Board, to attend, at such times as the said board shall allow, some place of worship of his own denomination within a convenient distance of the said workhouse, if there be such in the opinion of the board. . . ."

"officers" is interpreted by section 109 to include "any clergyman." It will doubtless be contended that the word "clergyman" means clergyman of the Church of England as by law established; but there is nothing in the Act shewing that that is so, but on the contrary, in section 74 of 7 & 8 Vict. c. 101, which is also an Act relating to the poor, the word "minister" there is defined as a person in holy orders.

[STEPHEN, J.—There are various authorities to shew that a Roman Catholic priest is a clergyman in holy orders.]

Yes, he cannot sit in the House of Commons. Moreover, the Act itself does not indicate any intention that the guardians should be limited to the appointment of a member of the Established Church. It is contended that the Legislature has been carefully jealous to guard the religious freedom of the inmates of poorhouses. The 19th section of 4 & 5 Will. 4. c. 76 expressly provides that no inmate of a workhouse shall be obliged to attend any religious services contrary to his religious principles, and contains a clear authority to the guardians to allow ministers of particular denominations to enter the workhouse to hold religious services and to give religious instruction. It is very inexpedient that such religious services should be of a purely voluntary character, paid for by persons outside the house, and conducted by ministers perfectly independent of the workhouse authorities.

Again, 31 & 32 Vict. c. 122. s. 21, expressly provides that, where no religious service according to a pauper's own creed is provided in the workhouse, any inmate may, subject to regulations, go to his own proper place of worship—a section which clearly contemplates that the poor law authorities may provide the necessary service and attendance for the decent performance of such service. If the guardians can by law appoint such services to be held, and provide accommodation and attendance, is it reasonable that the minister conducting such service should not be dealt with as an "officer" of the board engaged for the purpose of carrying out the general objects of the poor law and the administration of the affairs of the workhouse?

The other side will doubtless rely on the fact, that under an order made in 1843 by the Poor Law Commissioners, under the provisions of 4 & 5 Will. 4. c. 76. ss. 42 and 46, regulating and defining the duties of officers, the duties of the chaplain as defined could scarcely be performed with propriety save by members of the Established Church. But even if this be so, the order of 1843 has been much enlarged, and to some extent superseded, by the order of 1867, under which, beyond doubt, express authority is given to the guardians to employ "such persons as they shall deem requisite in or about the workhouse," &c.

Sir Hardinge Giffard, Q.C., and *Clement Higgins* shewed cause.—The question here is, not whether a Roman Catholic priest is a clergyman in the ordinary sense of the term, but whether the particular Act of Parliament gives power to the guardians to appoint anybody who is not a member of the Church of England to conduct services within a workhouse. The power to administer parish relief is regulated by statutes, a great number of which are intended to prescribe with great precision the amount of relief to be given, for the purpose of avoiding what was considered to be an abuse of the expenditure of the ratepayers' money for purposes other than those the Legislature thought proper. Under 4 & 5 Will. 4. c. 76, sections 42 and 46, the commissioners were empowered "under their hands and seals, to make rules, orders and regulations, to be enforced at every workhouse," as well as "to define and specify" the duties of officers; and rules, &c., under the powers contained in those sections were duly made, dated the 21st of April, 1843. Now the rules of 1843 are only consistent with one interpretation; and it can scarcely be gravely maintained that a chaplain empowered to catechise "such children as belong to the Church of England" can include a chaplain of some other denomination. It has been contended that the order of 1867 confers a general authority upon guardians to make such appointments as they may think desirable; but the 3rd article of the order of 1867 provides that "the foregoing articles of the order, except so much thereof as relates to either quarterly or other periodical payments, shall not apply to the following officers or persons—that is to

say, clerk to the guardians, chaplain." A chaplain, therefore, is expressly excluded from the operation of that order. If it had been the intention of the framers of the order of 1867 to confer power to make the appointment contended for, such power would have been given in express words. There is no real hardship in refusing to confer upon guardians such a general authority as is asked for, inasmuch as there is a conscience clause in 31 & 32 Vict. c. 122. s. 21, which permits paupers to attend services out of the workhouse for whom no service is provided in the workhouse.

STEPHEN, J.—I think, after the arguments which we have heard, I may say that we fully understand the question upon which our opinion is desired; and I must say, although it has been argued extremely well, and matters have been brought to the point at once, I do not feel any difficulty in deciding the question. As, however, it is one of considerable importance, I will go through the different sections of the Acts of Parliament and the different orders of the Local Government Board.

First of all, I may say that it is impossible not to observe with satisfaction and pleasure that the judgment which we are about to give, be it right or wrong, is one which even the learned counsel who have argued against the allowance of this rate wished to be delivered, because it is clear that, so long as any religious instruction at all is given to the inmates of workhouses, it ought to be given without any reference to particular religious creeds. I think it is equally clear that it is highly desirable on public grounds that the persons who so habitually and systematically give such religious instruction should be appointed by the select vestry or the guardians, and should have the responsibility which officers of those institutions are under, instead of being mere volunteers who are under no responsibility at all to the body by which they are appointed. Of course, although one is glad to be able to give judgment in favour of what is obviously admitted to be on general public grounds expedient, that in itself is not a conclusive reason for giving such a judgment, but one must give the judgment according to the existing law as one understands it to be. Now, as there are several Acts which have been referred to, I will consider them in order of time, and point out how they appear to me to bear upon the subject. The first section which has been referred to is the 19th section of the Poor Law Amendment Act, 1834 (3 & 4 Will. 4. c. 76), and the effect of that is, that "No rules shall oblige any inmate of any workhouse to attend any religious services celebrated in the workhouse contrary to the religious principles of such inmate, and that it is lawful for any licensed minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, to visit such workhouse for the purpose of affording religious assistance." I agree, with regard to this, that that rather points to what one knows to be the fact, that a position in some degree superior to that of other religious bodies is given to the clergy of the Church of England. This section in effect enacts that, although you have the Church of England service in the workhouse, nobody is to be obliged to go who does not like it, and those who are not members of the Church of England shall be allowed to have the religious advice of persons of their own way of thinking.

The next material section is the 46th section, and that section says that "it shall be lawful for the commissioners to direct the guardians to appoint such paid officers as the commissioners think necessary." I may observe with regard to this section, before I go further, that a judicial construction has been put upon it, and it is of some importance in itself. A judicial construction was put upon this section in the case of *The Queen* v. *The Braintree Union* (3), and that case decided that under those direct words the Poor Law Board had power to the appointment of a chaplain. It was questioned originally whether the words "such officers" would of itself include the chaplain; but it was distinctly held that it would include chaplain, and that is a matter of some importance as shewing that general words in relation to poor

(3) 1 Q.B. Rep. 130; 10 Law J. Rep. M.C. 76.

law relief have been construed by the Court of Queen's Bench as including among other things the ministrations by ministers of religion. The next matter referred to is the interpretation clause of this Act, section 109, which says that the word "officer" shall be construed to extend to any clergyman, and that clause supplied one of the arguments in the case of *The Queen* v. *The Braintree Union* (3). The next matter which I think necessary to refer to is the order made by the Poor Law Commissioners in the year 1843 with regard to the officers who were directed to be appointed by the guardians—in this case the select vestry—and whose duties were defined to be "to read prayers, to preach a sermon, to examine the children, and to catechise such as belong to the Church of England, and to make a report of the same." I quite agree with the interpretation which was put on that by Sir Hardinge Giffard. It is quite clear, to my mind, that it means that the chaplain is to be a clergyman of the Church of England, and there can be no doubt that the clergy of the Church of England are to that extent persons in a different position from the clergy of other bodies.

Then comes the order of 1867, on which, as it seems to me, this matter turns, and which provides that "the guardians may employ such persons as they shall deem requisite in or about the workhouse, or workhouse premises, or upon the land occupied for the employment of pauper inmates, or otherwise in or about the relief of the indoor poor, upon such terms as shall appear to them to be suitable." Article 3 says that, except so much thereof as relates to the quarterly or other periodical payments of the officers, it is not to apply to the clerk of the guardians, or to the chaplain, or to certain other persons. Now the question is, whether that authorises the appointment of a Roman Catholic clergyman, who is not called a chaplain, and who has not the specific duties of a chaplain, but who does many things which would naturally be done by a chaplain—whether that authorises the appointment of a Roman Catholic chaplain for that purpose. I must say it appears to me clear that it does. There is no restriction to the persons who are to be employed, and although, no doubt, the greatest prominence in the drift of these articles is given to persons in a very inferior condition to chaplains, the words are wide enough to include a chaplain, and I am inclined to think the intention was that they should include chaplains. I use the word "chaplain" because it is the plainest word to use if it is intended to signify clergymen employed upon religious duties. I should think, if I was asked, that probably the Local Government Board, by using general language, wished to decide a question which it was well known was likely to produce a great deal of violent and sectarian feeling if it had been dealt with in a more explicit manner. Article 3 says, "The foregoing articles, except so much thereof as relate to either quarterly or other periodical payments, are not to apply to a chaplain." If it was not for that they would apply to a chaplain, and as regards the quarterly or other periodical payments they unquestionably do apply to a chaplain. That being so, why should I suppose that the articles did not authorise the appointment of what I may call Nonconformist chaplains—chaplains other than the chaplain who is a member of the Church of England as by law established. But it does not at all stop there. There are various things which lead me to think that the conclusion at which I have arrived is in accordance with the intention of the Local Government Board, who have power given them by the Legislature to make this order.

The order was made in August, 1867, and the Poor Law Amendment Act of 1868, which must have been no doubt drawn by persons who were very well familiar with the law and familiar with the orders of the guardians, provides, by section 21, that, "Every inmate, for whom a religious service according to his own creed shall not be provided in the workhouse, shall be permitted, subject to regulations to be approved of or ordered by the Poor Law Board, to go elsewhere." It therefore contemplates that at that time it was lawful for the guardians to provide religious services for the inmates, or for many of the inmates of the workhouse, according to their own creed. Now, where was any authority given to do that? If

my interpretation of the order of 1867 is right, they recently received authority that would enable them to do it. Therefore, it seems to me that the Act of Parliament passed in 1868 contemplates the state of things as being in existence which could only have been brought into existence on the construction of the order for which Mr. French contends, and which I think he was right in contending. It does not even, however, stop there, because I think you are entitled to look at the facts to see the view of the case which is taken by the Local Government Board themselves. The Local Government Board were applied to in this very case in order to know whether Roman Catholic clergymen could be appointed in the manner which has been actually done, and their answer to that application was the reference to this order as giving the select vestry of Liverpool authority to deal for themselves with the matter which they referred to the board.

Taking the whole matter together, the original order, the indications which are to be gathered from the various Acts, and the amended order, it seems to me that the order of 1867 does give the vestry the power to make the appointment which they have made, and accordingly I think that the auditor's disallowance must be quashed.

WILLIAMS, J.—I am of the same opinion.

Rule absolute.

Solicitors—W. W. Wynne & Son, agents for T. J. Smith & Son, Liverpool, for applicant; Kennedy, Hughes & Kennedy, for defendant.

[CROWN CASE RESERVED.]

1884. May 10. } THE QUEEN *v.* DE BANKS.*

Larceny by Bailee—Bailment of Money.

The prisoner was engaged by the owner of a horse to look after it for a few days, and afterwards to sell it. He sold it for 15*l. The owner having sent his wife to receive the money, she asked the prisoner to give her the money; this the prisoner refused to do, and eventually absconded with the money and dishonestly appropriated it:*—Held (STEPHEN, J., *dissentiente*), *that the prisoner was a bailee of the money.*

Case reserved by the deputy-chairman of the Quarter Sessions for the county of Salop.

The prisoner, Mark De Banks, was indicted for embezzlement.

The evidence, so far as it is material to the point reserved, was as follows:—

Joseph Suker, the prosecutor, proved: "On the 11th of January I drove a chestnut mare into Chester with the prisoner. I left her at Mr. Wild's, a butcher. I engaged the prisoner to look after her. I said to him, 'Do the mare well, and I will be here on Wednesday morning and will pay you for your work.' He was to have charge of her till I came. I told him to pay for the keep till I came. I meant him to look after her altogether. I should not have objected to his doing anything else. On Saturday, the 12th of January, I saw the prisoner. I asked him how the mare looked, and he said she was as lame as a cat; he said he had removed her to his father's house. I said I should be at Chester by the first train. I told him the mare should be sold on the Wednesday morning when I went, as she would not do for me. I sent my wife on that morning. I have never received a farthing from the prisoner on account of the mare."

Annie Suker, wife of the prosecutor, proved: "I went to Whitchurch on the 16th of January. I saw the prisoner in the street. I asked him if he had sold the mare; he said he had not. I went with him to Wild's stables. Saw mare taken out of the stables into the street.

* *Coram* Lord Coleridge, C.J.; Grove, J.; Field, J.; Stephen, J., and Smith, J.

The Queen v. *De Banks*, *C.C.R.*

Prisoner was riding the mare about the fair. Mr. Foster bought her. Prisoner, Mr. Foster, and Arthan went to the Queen's Head together. I was outside the door and watched. I saw Foster give prisoner some money. Prisoner came out and shewed me a cheque. He did not give it me. He said we would go to the bank and get it cashed. I asked him for it several times, but he would not part. He told me he had sold the mare for 13*l*. He came out of the bank and said they would not cash him the cheque. I asked him to give it to me and said I would pay his expenses. He would not do so. I said he must come with me to Whitchurch, and I must have either the money or the mare. I had great difficulty in getting him to the station. At Whitchurch, when we got to the gas-works, he bolted down a little alley which leads to the canal. I ran after him and called, but he did not answer. I have never received any money for the mare."

Joseph Arthan proved sale of chestnut mare by prisoner to Foster, and payment of 15*l*. to prisoner.

Robert Thomas, sergeant of police, proved that prisoner absconded from Whitchurch on the 18th of January. Prisoner was arrested at Chester on the 31st of January.

I held there was no evidence to go to the jury of the defendant's employment as a servant so as to make him guilty of embezzlement. It was then contended on behalf of the defendant that there was no evidence of the larceny of 15*l*. I left the case to the jury, who found "that the prisoner had authority to sell the mare, and converted the money to his own use," and a verdict of "guilty of larceny" was recorded.

The question reserved for the opinion of the Court is whether there was any evidence of larceny which could properly be left to the jury.

No counsel appeared.

LORD COLERIDGE, C.J.—I think this conviction may be supported. It is doubtful whether, under the circumstances, the prisoner was not entrusted as a servant, and embezzled; but we have not to consider that point, the chairman having ruled otherwise, and the jury not having had the question left to them. The only point we have to consider is, whether there was evidence to justify a conviction for larceny. Probably the prisoner was entrusted with the horse for sale: the jury have so found, and the evidence of the prosecutor would seem to shew that that finding was correct. I think the effect of the evidence is that the prisoner was there to sell the mare and to receive the money derived from such sale, and then to hand it over to the prosecutor or to his agent, who in this case was his wife. It seems to me that the prisoner was a bailee of the money—for the wife who attended as agent of the prosecutor. She demanded the money, the prisoner refused, and thereupon he was guilty of larceny of that money of which he was bailee.

GROVE, J.—I must say I have some doubt as to whether the prisoner was a "bailee" of the money within the statute. Although there is ample evidence that he took the money, yet it is clear that the money was not given to him by the prosecutor for custody. But I am not aware of any case which makes a man any the less a bailee because he had not received the money or the goods directly from the hands of the owner.

FIELD, J.—I also think that the judgment must be affirmed, though I confess that I entertained at one time considerable doubt as to whether the prisoner was a bailee. It seems to me, however, that there is evidence that the prisoner was a bailee of the money. It is important to note that the sale was for cash, and that there was no usual course of dealing between the parties by virtue of which the prisoner had a right to mix the money he received with his own moneys, so that no specific money was his employer's, which has been held to be a justifiable proceeding in the case of a stockbroker charged with a similar offence—see *The Queen* v. *Tatlock* (1). But that case does not apply to the present one, for the evidence shews that the prosecutor never intended to entrust the prisoner with the money,

(1) 13 Cox C.C. 328.

but intended him to hand it over at once. I think, then, that he was a bailee of the money within the statute; and that being so, there was ample evidence that he converted the money to his own use, and did so with felonious intent to appropriate it, for he kept the money and went away with it. I think, therefore, that the conviction can be supported.

STEPHEN, J.—I am sorry to be obliged to differ from the rest of the Court; but the difference turns rather upon the interpretation of the facts than upon any principle of law. I think the prisoner was not a bailee of the money, and that the present case is governed by *The Queen* v. *Hassall* (2), where it was held that one who receives money with no obligation to return the identical coins is not a bailee of such coins within the 24 & 25 Vict. c. 96. s. 3, under which the present prisoner has been convicted. In that case Lord Chief Justice Cockburn said: "The conviction cannot be sustained; the prisoner is indicted for larceny as a bailee. The word 'bailee' must be understood here in its legal acceptation of a deposit of something to be returned in specie, and does not apply to the receipt of money with an obligation to return the amount, where there is no obligation to return the identical coin. That is not a bailment in the ordinary sense, and is not within the statute." There is nothing to shew that the prisoner was bound to return the coins received for the horse; it was not so understood by the parties, and, in fact, the evidence negatives this view. I must say I do not understand why the chairman directed the jury that there was no evidence that the prisoner was servant to the prosecutor; but however that may be, that is not the question for us. The prisoner was authorised to sell the horse in the ordinary way, and his action was not interfered with by the wife, who never objected to a cheque being, as she supposed, cashed. As the intention was that he should sell the mare and pay over the amount, and not pass over the specific coins received, I think he could not be properly convicted under this statute.

(2) L. & C. 58; 30 Law J. Rep. M.C. 175.

SMITH, J.—I am of the opinion of the majority of the Court that the prisoner was rightly convicted as a bailee of the money demanded of him by the wife of the prosecutor.

Conviction affirmed.

[CROWN CASE RESERVED.]

1884. May 10. } THE QUEEN *v.* MALLORY.*

Evidence—Husband and Wife—Admission by Wife in Husband's presence.

The prisoner was indicted for receiving stolen goods, knowing them to have been stolen. To prove his guilty knowledge, evidence was given that a police constable asked the prisoner when he had bought the stolen goods, to which he replied he did not then know, but his wife should make out a list of them, and on the next day the prisoner's wife, in her husband's presence, handed to a constable a list, saying in her husband's hearing, "This is the list of what we bought and what we gave for them":—Held, *that the list was admissible against the prisoner on his trial for receiving the goods.*

Case reserved by the deputy-chairman of the East Riding Quarter Sessions.

The prisoner, George Mallory, was tried at the East Riding of Yorkshire Quarter Sessions, held at Beverley, for receiving certain articles, the property of Agnes Fitzpatrick, knowing the same to have been stolen.

The prisoner was a marine store dealer, and it appeared from the evidence that the stolen articles were such as he might have bought in the lawful exercise of his business. It was not disputed by the prisoner that the goods had been actually stolen by the man who brought them to his shop, and the price given by the prisoner for the articles thus became a material question in the case. With the object of shewing that the amount so paid was much less than

* *Coram* Lord Coleridge, C.J.; Grove, J.; Field, J.; Stephen, J., and Smith, J.

The Queen v. *Mallory, C.C.R.*

the real value of the stolen goods, the counsel for the prosecution proposed to put in evidence a list of the articles bought by the prisoner, with the amount paid by him for each of the several articles.

The list was as follows:—

1884.			£	s.	d.
22 January		Brass Rods . . .	0	1	6
23	„	Sheets table cloths towels	0	6	0
24	„	Blankets canvas knives forks spoons 3 pillows .	0	13	0
25	„	tea service 2 cruets 5 pillows Peice carpet. .	0	13	0
26	„	fether bed . . .	0	14	0
28	„	2 fether beds small looking glass . . .	1	12	0
29	„	1 Looking Glass Orments	0	6	0

The circumstances under which the list was tendered sufficiently appear from the following notes taken by me at the trial.

John Duke, police constable (after explaining the tracing, &c., of the stolen property), says, "I asked Mallory when he bought them. He was much put out, and said he could not say, and I asked him to consider, and he said he would, and his wife would make out a list." This was on the 30th.

William Winterbottom, superintendent of police, said, "I went to the prisoner's house on the 31st; prisoner and his wife were there; when I called next day, the wife, in her husband's" (Mallory's) "presence, handed me a list of goods with dates and prices; she said, 'This is the list of what we bought and what we gave for them.' The prisoner did not speak, but he heard what she said and saw the list handed to me. I believe the whole of it is in the wife's handwriting." This witness then produced the paper, and the counsel for the prosecution tendered it in evidence.

The counsel for the prisoner objected to its admission on the grounds—

1. That the wife would be the proper person to prove its contents, and the evidence of a wife is not admissible against or for the husband.

2. The paper is neither more nor less than the evidence of the wife against the husband, and is therefore inadmissible.

3. There is no evidence that the husband knew or saw the contents before it was handed to the superintendent, nor that it was made by his direction, and in a criminal case the wife cannot be the agent of her husband.

I admitted the paper (which was read to the jury by the clerk of the peace), reserving for the consideration of the Court of Crown Cases Reserved the question as to whether or not I was right in doing so.

It was proved that the value of the stolen property was greater than the sum shewn by the paper to have been paid by the prisoner. There was no other evidence of the price he paid.

The jury convicted the prisoner.

The question for the Court is, whether the paper above-mentioned was rightly admitted in evidence. If so, the conviction is to stand; otherwise, to be quashed.

E. Silvester, for the prisoner.—The paper is not admissible in evidence against the prisoner. The wife cannot give evidence in Court against her husband, and *a fortiori* her mere statements out of Court cannot be evidence. Nor can it be admitted upon the ground that there was evidence of authority given by the prisoner to his wife to make out the list, because in a criminal case the admission of an agent is not evidence against the principal —*Lord Melville's Case* (1). The list cannot be put in evidence as admitted by the prisoner, for there is no evidence that he ever saw the contents of the paper.

[STEPHEN, J., referred to *Daniell* v. *Pitt* (2).]

No counsel appeared for the prosecution.

LORD COLERIDGE, C.J.—If this communication had been made to the policeman in the absence of the prisoner by the prisoner's wife I should have felt great doubt as to its admissibility in evidence. But that is not this case, and it is not necessary now to determine whether that would have been good evidence or not. It is not at all clear when a prisoner refers to a third person, how much of what that third person may say is admissible against him; but here the prisoner definitely refers to his wife to make out the answer to the question put to him. He says, "I have not the means of answering, but my wife has, and she shall make out a list which

(1) 28 How. St. Tri. 750, 764.
(2) 1 Campb. 366*n*.

will be an answer to the question;" and then on the next day a policeman went to the house, and the wife hands over the list which her husband had ordered her to make out for him. She hands it over as her husband's statement and in his presence, and he never denies this, or says that there is any mistake with regard to it. He had an opportunity of objecting to the list or his wife's statement; he did not do so, and the evidence is clearly admissible.

GROVE, J., FIELD, J., STEPHEN, J., and SMITH, J., concurred.

Conviction affirmed.

Solicitor—J. R. Cooper, Bridlington, for the prisoner.

1884. May 26. } UNITED LAND COMPANY *v.* TOTTENHAM LOCAL BOARD.

Highway—Expenses of diverting Footways — Costs of independent Solicitor retained by Local Board—Highway Act, 1835 (5 *&* 6 *Will.* 4. *c.* 50), *ss.* 84 *and* 101.

The costs of an independent solicitor retained by the local board to take all the necessary steps for diverting three footways desired by a private person to be diverted, are not "expenses" within the Highway Act, 1835 (5 *&* 6 *Will.* 4. *c.* 50), *s.* 84; *and a condition that the person desiring the diversion of a footway shall pay all costs and expenses of diverting the same, may give the local board a right to recover such costs by action, but not as "expenses" recoverable in a summary manner under section* 101.

This was a Case stated by the Justices for the county of Middlesex under 20 & 21 Vict. c. 43. s. 3, which disclosed the following facts:—

The appellants are, and have been since April, 1881, the owners of an estate at Bruce Grove, Tottenham. The respondents are an urban sanitary authority under the Public Health Act, 1875 (38 & 39 Vict. c. 55), and by virtue of section 144 of that Act execute the office of, and are the "surveyors of highways" within their district, which includes the parish of Tottenham. In the month of December, 1881, after application made by the appellants, the respondents passed a resolution assenting to the diversion of three public footways crossing the appellants' said estate, on condition that the entire expense in connection with the several diversions should be defrayed by the company.

Mr. Crowne, the clerk of the respondents (who is not a solicitor), thereupon, with the ultimate sanction of the respondents, instructed Messrs. Heath, Parker & Brett, the solicitors who usually acted for them, and they took all the steps necessary and required by the Highways Act, 1835, to be taken in such cases. There was, at the time when the expenses hereinafter mentioned were incurred, a surveyor in the employment of the respondents, appointed by them under the powers conferred on them by the Public Health Act, 1875. On the 12th of April, 1883, the solicitors asked for payment of their charges in the matter, and, in reply to a request for particulars, sent a copy of a bill of costs previously delivered by them to the respondents. The respondents paid to the said Messrs. Heath, Parker & Brett the sum of 224*l.* 8*s.* 10*d.*, being the amount of costs allowed by the clerk of the peace on taxation, and at the same time directed summary proceedings to be taken under section 101 of the Highway Act, 1835 (1), for the recovery thereof

(1) 5 & 6 Will. 4. c. 50. s. 84: "And be it further enacted that when the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted or turned, either entirely or reserving a bridleway or footway along the whole or any part or parts thereof, the chairman of such meeting shall by an order in writing direct the surveyor to apply to two Justices to view the same, and shall authorise him to pay all the expenses attending such view, and the stopping up, diverting or turning such highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act: Provided, nevertheless, that if any other party shall be desirous of stopping up, diverting

from the appellants. Three complaints were accordingly preferred on behalf of the respondents by the said Edward Crowne, and summonses issued thereon, the sums severally claimed being the apportioned amount of the costs alleged to have been incurred in respect of each of the said footways. The Justices found as facts that the employment of the solicitor by the respondents was reasonable and proper; that the costs of such employment were "expenses" properly incurred for the purpose of the view, and the stopping-up, diverting, or turning of the footways, within the meaning of the Highway Act, 1835, section 84 (1); that the said Messrs. Heath, Parker & Brett were employed by the authority of the respondents to do the work charged for, and that the taxation was conclusive evidence of the reasonableness of the charges. They accordingly convicted the appellants of the three offences complained of, and by three separate convictions adjudged that for their said offences they should forfeit and pay the three sums sought to be recovered.

H. H. Asquith, for the appellants.—These are duties cast by the Act upon a surveyor, and to be performed by him; and if for his own convenience he chooses to employ another person to perform them for him he cannot increase the charges or expenses which the Act entitles him to recover from persons at whose request the roads are diverted, by adopting that expedient for his own convenience.

The material words of section 84 (1) are these, "The said surveyor shall apply to the Justices as last aforesaid for the purposes aforesaid"—that is, for the expenses attending "such view, stopping-up, diverting or turning the highway, which shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid."

The present respondents, the local board of health, are the urban sanitary authority for the district of Tottenham, and by the Public Health Act, 1875, the urban sanitary authority is substituted in urban sanitary districts both for surveyor of highways and for the vestry. The urban sanitary authority gives assent to the proposed diversion in place of the vestry. It communicates its assent to the Justices, and continues the other proceedings subsequent to that communication as surveyor of highways. An urban sanitary authority, being a corporation consisting of a number of members, cannot collectively perform the duties cast by the Highway Act upon the surveyor, many of which are of a purely ministerial kind, so the Public Health Act provides that all ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways, may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint. That means, when they have not got a surveyor within whose regular duties this is, they may choose some other official of theirs to per-

or turning any highway as aforesaid, he shall by a notice in writing require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry and to submit to them the wish of such person, and if such inhabitants shall agree to the proposal the said surveyor shall apply to the Justices as last aforesaid for the purposes aforesaid; and in such case the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid."

Section 101: "And be it further enacted that in all cases in which any penalty or forfeiture is recoverable before Justices of the peace under this Act, it shall and may be lawful for any Justice to whom complaint shall be made of any such offence, to summon the party complained against before any two Justices, and on such summons the said two Justices may hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such Justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing was exhibited."

form the duties *ad hoc*. If that is not the right construction, and they may entrust the duty to some one else instead of their surveyor, that does not give them any right to perform the duty in a more expensive way or entrust it to a different kind of person entitled to charge on a different scale. The duty is still ministerial, falling within the ordinary scope of a surveyor's employment, and the board, if they have not a surveyor, ought to entrust it to some person of a like character.

By the agreement the company may have rendered itself liable to an action, but by this summary proceeding the board are only entitled to recover such expenses as are expenses within the meaning of section 84 (1); and, to ascertain what are expenses within the meaning of section 84, regard must be had to section 85, and to the character of the various things which have to be done. These are of a purely mechanical kind, cast by the Act upon the surveyor; and no provision of any kind being made in the Act authorising the surveyor to employ anybody else to do them, it is a reasonable conclusion that the party at whose request the diversions of the road were done was to be liable for the expense of a solicitor.

It would be part of the duty of the surveyor of the board to do these things for nothing, as being part of his office as one of the officers of the board.

It is further objected that the board cannot object to the reasonableness of these charges because these bills have been taxed by the clerk of the peace and the board attended the taxation; but that cannot make them expenses if they are not expenses.

The taxation provided for by the Public Health Act, 1875, is for the purpose of audit, and is to be *prima facie* evidence of the reasonableness of the amount for the purposes of the audit when the auditor comes to examine the accounts of the local authority, and for that purpose only. Even then it is only *prima facie* evidence of the reasonableness of the charges. The Justices in the present case have held that by the mere fact of the board attending the taxation and objecting to the items, the allowance of the same on taxation is conclusive evidence that they were reasonable, not merely as between the local authority and the solicitors, but as between the local authority and us.

The clerk of the peace had no jurisdiction upon that taxation to consider any other question than this: Assuming the solicitor to have been retained by the local authority to do this work, are the charges made in this bill reasonable or not?

The Public Health Act, by casting the duties of a surveyor of highways upon the urban sanitary authority, has not in any way enlarged the power of the surveyor to charge expenses on the persons at whose request highways are diverted.

Francis Turner, for the respondents.—The surveyor of highways generally or very frequently was a layman entirely unversed in Acts of Parliament, and certainly most incompetent to do all the somewhat complicated things required by this Act of Parliament in order that a highway may be diverted.

In the present case, although there is a surveyor of the board, that is not the same as a surveyor of highways, whose duties are transferred to the board. The duties of the surveyor are those of a layman who had charge of the roads. The magistrates who heard the whole of the circumstances have found that the employment of solicitors under such circumstances was reasonable and proper. If the employment of the solicitor was necessary and proper, then the expenses of the solicitor would follow as also necessary and proper, because the Public Health Act provides that all ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, "or by or to such other person as they may appoint." There being certain things to be done towards the stopping up and diversion of these highways, the board appoint, not their surveyor—because they very reasonably think this, being a legal matter, is a matter for a lawyer—but appoint their solicitors to carry through the matter, and the Justices came to the conclusion that the appointment was reasonable and proper,

and explanations were given by the solicitors of the things required to be done, which shewed clearly that it was matter for a solicitor.

The person whose road it is may employ his solicitor to see that the work is properly done. Why is not the board in the same position? This is a trading company. Suppose the owner of the property to have employed his solicitor, those clearly would be expenses which he had incurred in connection with stopping up the road; and that would be the case even if it were a private owner in this case, where the owner is in fact a private company having a permanent solicitor.

It is only necessary to look at the requirements of the sections themselves—sections 84 and 85—to see that it would have been impossible for the board without legal assistance to have done what they were required to do; and then if, after all, having failed to resort to legal assistance for any purpose, the whole proceedings become void, they would be in a very unpleasant position towards the owner of the property, who might say, "Why did you not employ a lawyer? By not doing so our building operations are suspended for another twelve months, and we shall look to you for damages."

It is not a fair construction of the statute to say that, when there are things to be done which are shewn to require technical legal knowledge, the board, which is composed of tradesmen and similar persons, are to undertake that duty themselves, or trust to their surveyor, who may have just as little legal knowledge as any one of them.

The board gave their assent on condition that the expenses in connection with the several diversions should be wholly defrayed by the company.

It is suggested that this may possibly be a contract with the company whereupon we might be entitled to recover in an action, but that it does not bring it within the word "expenses." Some one must go with the Justices to view. There will be some expense attending that view. The surveyor of highways ceases to be an individual and becomes the local board, and the local board has the power to depute its acts required in such matters to its surveyor, or to such other person as it shall think fit to appoint.

There is no obligation whatever upon the urban authority to appoint its surveyor to go about private business like this. They may very fairly say, "Tottenham is a large district. There is a great deal of public work which our surveyor is required to do, and we will not put upon our officer duties of this kind which will require his attention in and about this particular piece of the United Land Company's land for a considerable time, to the abstraction of him from his proper duties." If they do that, it is a perfectly reasonable thing for them to do, and is an exercise of their jurisdiction and of their power to elect whom they will employ, with which this Court will not interfere.

HAWKINS, J.—This is an appeal from an order of Justices for the payment of several sums of money set forth in the Case as though they were expenses which were incurred under the Highways Act of 1835, 5 & 6 Will. 4. c. 50. s. 84, which has reference to the diverting or stopping up of paths. Now, the 84th section, *inter alia*, enacts "that when the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely or reserving a bridleway or footway along the whole or any part or parts thereof, the chairman of such meeting shall by an order in writing direct the surveyor to apply to two Justices to view the same, and shall authorise him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act." Then it goes on to say: "If any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall by a notice in writing require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry and to submit to them the wish of such person, and if such inhabitants shall agree to the proposal.... the expenses shall be paid to such surveyor by the said

party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid." The only difference is this—that where the inhabitants are desirous of stopping up or diverting a highway, then immediately the chairman of the vestry gives his order directing the surveyor to apply at once to the Justices; and where a private individual desires to have a highway stopped, he gets an order from the vestry, and the same process is to be gone through. In the case of the vestry desiring to have the highway turned, the surveyor is authorised to pay the expenses attending the view and the stopping up of the highway out of the money received by him for the purposes of this Act—that is to say, out of the rates. If a private individual desires to have the highway stopped up, he has to pay "such expenses as aforesaid"—such as are mentioned in the event of the vestry desiring it. In that case those expenses are to be paid by the party desiring it; and if that party does not pay them, they are to be recoverable in the same way as a forfeiture is recoverable under the Act.

Then the 85th section prescribes a variety of other steps which must be taken before a highway can be effectually diverted and turned.

Now in the present case there can be no doubt that highways were desired to be diverted by the appellants in this case; that they made the application to the local sanitary authority, the Tottenham local board, and the local board of health assented to the proposal that the highway should be turned; but they gave their assent on condition that the entire expense in connection with the several diversions should be defrayed by the company. This being assented to by the United Land Company, who are the appellants, Mr. Crowne, the clerk to the magistrates, instructed Messrs. Heath, Parker & Brett, and they took the necessary proceedings, and in the end sent in their bill of costs, which having been submitted to the taxation of the clerk of the peace, its amount is now sought to be recovered, by an order of the magistrates, as expenses under the 84th section, which are recoverable in the same manner as any forfeiture is recoverable under this Act.

The question really is, whether these items which are in this bill can be said to be expenses within the meaning of section 84. I am of opinion that they are not. I think the expenses incurred under section 84 are intended to be such expenses as, for instance, attending the view, the expenses of taking the Justices, all the necessary outlay, *e.g.*, in the preparation of the plan; but I do not think it was ever intended that in the case of these applications being made to divert a highway, a firm of solicitors should be instructed precisely in the same manner as if the matter were an action. I express no opinion at all as to whether or not under the arrangement made when these proceedings were taken the present appellants would be liable upon an action of contract. All I say is, these expenses which were incurred when these orders were made were not, I think, such expenses as were in contemplation under the 84th section of the Act.

Then it is said the Public Health Act, which transfers the duties of the surveyor of the highways appointed under the 5 & 6 Will. 4. to the urban sanitary authority, alters the case and gives them power to appoint a solicitor. I do not think that is so. Section 144 of the Public Health Act of 1875 enacts that "Every urban authority shall within their district, exclusively of any other person, execute the office of and be surveyor of highways, and have, exercise, and be subject to all the powers, authorities, duties, and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities, or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have, exercise, and be subject to all the powers, authorities, duties, and liabilities which by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district. All ministerial acts"—which these are—"required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban

authority, or by or to such other person as they may appoint." That means such other person as they may appoint of the character of surveyor.

By the 189th section it is enacted that "Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk and treasurer: Provided that, if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants, collectors or other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed." When it is said they may do these duties, which are ministerial duties, either through their surveyor or through any other person they may appoint, I do not think it was ever in contemplation that there should be any employment of an independent firm of solicitors for the purpose of doing these ministerial acts. I do not think that ever was in contemplation under this Act.

SMITH, J.—The question left for us in this case by the Justices is, whether the said conviction is good—that is, whether the conviction, or, if you like to call it so, an order made by the Justices ordering the United Land Company to pay the sum of 75*l.* 1*s.* to the Tottenham Local Board, was or was not right. The point for our decision is, whether the 75*l.* 1*s.*—that is, the whole sum—is made up of expenses under the 84th section of the Highway Act, 5 & 6 Will. 4. c. 50. If it be not made up of expenses which come within the purview of section 84, it is quite clear that section 101 cannot apply in this case. I wish to say that, on reading this case, I am by no means deciding whether the Tottenham Local Board had a good cause of action against the United Land Company for this sum of money. But I do say that it does seem to me that these expenses are not expenses which come within section 84.

Now I agree that, where a man wants to stop up or turn a public highway, it would not be prudent for him to rest entirely upon the surveyor and what he might think fit to do. I think it possible if he did that there would be some difficulty into which he would fall. But he must employ his own solicitor, or ask the other side to employ a solicitor for him, in which case he would have to pay either his own solicitor or the other person who employed a solicitor at his request. But the point is, whether or not these expenses of an independent solicitor are expenses within section 84. I think they are not, and I will say why. When you look at the old Highway Act of 1835, you find that surveyors under that Act are appointed by the early sections of that Act, and if a man does not take up his office when appointed he is liable to a fine. There are certain parishes who may employ a paid surveyor. Those are not recognised by the Act. When there is a highway which is wanted to be closed, the inhabitants in vestry may deem it expedient to stop up a highway, and if they do, the chairman of the meeting shall by an order in writing direct the surveyor—that is, the surveyor of highways, which is a very well known office—to apply to two Justices to view the same, and shall authorise him—that is, the surveyor—to pay all the expenses attending such view—that is, going to the Justices or taking the Justices there—and the stopping up, diverting, or turning such highway. Those are the expenses which the surveyor will have to necessarily incur when he stops up, diverts, or turns a highway. Therefore this section, as far as I have read it, is limited to this—that the chairman may authorise the surveyor to pay all the expenses attending the view—that is, with the Justices—and the stopping up, diverting, or turning such highway. He is to pay these out of money received by him for the purposes of this Act—that is, the Highway Act. Therefore, out of the highway rate, if a highway is to be diverted, and the inhabitants in vestry wish it, the chairman is to

authorise the surveyor to pay the expenses attending the view, and of course the structural expenses of stopping up, diverting, and turning it. They are the sort of expenses he may incur in stopping up a highway.

When a private individual wishes to stop a road, as in a case where the inhabitants in vestry are willing that it should be stopped, he has only to go through another formality with regard to the vestry, but exactly the same expense is to be paid in regard to the surveyor. The statute says, "The said surveyor shall apply to the Justices as last aforesaid for the purposes aforesaid, and in such case the expenses aforesaid shall be paid to such surveyor by the said party." What are the expenses aforesaid?

I have dealt with that, and I do not repeat myself.

Now we come to the next section—namely, section 85. That only amplifies somewhat the duties the surveyor has to do. I am not going to read the section, because anybody can read it and understand it who wishes to do so.

He has simply to give the notice there prescribed, and take certain steps which in that section are stated; but it is not in contemplation, in either of these sections 84 or 85, that the surveyor is to take independent advice from an independent solicitor. Nothing of the sort is in this section, and if I am right as to that, inasmuch as this is a proceeding under section 101, it is to enforce payment of the independent solicitor, which is not within section 84, and it seems to me this conviction cannot stand.

It was contended that, under the Public Health Act of 1875, the surveyor is entitled to employ an independent solicitor by reason of the last line of section 144, of which section the material parts are these:—"Every urban authority shall within their district, exclusively of any other person, execute the office of and be surveyor of highways." Therefore the urban authority is made the surveyor of highways for that district. Then it goes on to say what the duties of surveyor of highways are to be. It is exactly the same as under the old Highway Act of 1835. The last part of that section says, "All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to any other person as they may appoint." That means to say, if you have to give notice to a surveyor, you need not give notice to a surveyor, but to another officer of the company, or such other person as they may appoint. I read that in connection with section 189, which gives them power to appoint and employ collectors, assistants and other officers and servants, as may be necessary and proper for the efficient execution of the Act. They may say, "If you like, you may give the notice to a collector or clerk instead of a surveyor." It does not authorise, in any shape or way, the surveyor employing an independent solicitor to do these legal acts.

I think also the Justices were wrong in holding that the taxation was conclusive in this case. I am clearly of opinion with my brother Hawkins that these are not expenses within section 84. This being so, the appeal must be allowed, with costs.

Appeal allowed, with costs.

Solicitors—H. J. Smith, for appellants; Heath, Parker & Brett, for respondents.

[IN THE COURT OF APPEAL.]

1884. June 21, 23. July 12. THE PLUMSTEAD DISTRICT BOARD OF WORKS *v.* SPACKMAN.*

Metropolis — Building beyond Line of Street — Metropolis Management Amendment Act, 1862 (25 & 26 *Vict. c.* 102), *s.* 75 —"*General Line of Buildings*"—"*To be decided by the Superintending Architect*" —*Jurisdiction of Magistrate—Architect's Decision.*

Upon a complaint to a magistrate by a district board, under section 75 *of the Metropolis Management Act*, 1862, *that*

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

Plumstead Board of Works v. *Spackman, App.*

a building has been erected in a street, place, or row without the consent of the Metropolitan Board of Works beyond the general line of buildings as decided by the superintending architect of the Metropolitan Board of Works, the decision of such architect is conclusive as to the general line of buildings, and the magistrate has no jurisdiction to decide what is the general line of buildings (*per* BOWEN, L.J., *and* FRY, L.J.; *dissentiente* BRETT, M.R.).

St. George's Hanover Square *v.* Sparrow (33 Law J. Rep. M.C. 18) *and* Simpson *v.* Smith (40 Law J. Rep. M.C. 89) *disapproved.*

Case stated by a metropolitan magistrate upon a summons by the surveyor of the Plumstead District Board of Works against Arthur John Spackman, for that on the 15th of January, 1883, and other days, he did unlawfully erect a building on the north side of a certain street, place, or row of houses called Newton Terrace, High Road, Lee, and adjoining or forming part of the premises known as No. 7 Newton Terrace, of which he was the owner, without the consent in writing of the Metropolitan Board of Works, and beyond the general line of buildings in such street, place, or row of houses, as decided by the superintending architect to the Metropolitan Board of Works for the time being, contrary to the 75th section of the Metropolis Management Act, 1862.

The defendant was the owner of No. 7 Newton Terrace, which formed one of a terrace of nine houses in the High Road, Lee. The frontage of the house, as well as the line of frontage of the other houses of the terrace, did not exceed fifty feet in distance from the High Road.

The defendant had, on or about the date mentioned in the summons, without obtaining the consent of the Metropolitan Board of Works (which consent had in fact been refused), commenced to erect, and proceeded with the erection, of a building upon the forecourt of No. 7 Newton Terrace, thereby extending the frontage of that house to the High Road.

On the 15th of February, 1883, the complainant and the defendant attended before Mr. George Vulliamy, the superintending architect of the Metropolitan Board of Works, and were heard by him with reference to the position of the line of buildings, and on the 7th of March, 1883, Mr. George Vulliamy published his certificate, whereby he decided that the main front of the buildings forming the row of houses on the northern side of the High Road, and tinted pink on the plan annexed, was the general line of buildings on the north side of the High Road between Brandram Road on the east and the grounds of Hurst Lodge on the west.

Upon the west of the plan, but not indicated upon it, was a wooden structure upon brick foundations abutting on the High Road, consisting of a stable, with coach-house and dwelling-rooms above, and used by the occupiers of Hurst Lodge. This stable was at the spot at which the general line of buildings laid down by the certificate ended on the west. To the east of the spot at which the general line of buildings of the superintending architect ended on the east there was a chapel which abutted on the High Road, and immediately to the east of the chapel was a row of twenty houses and shops, all of which abutted on the High Road.

The erection put up by the defendant in front of No. 7 Newton Terrace extended considerably beyond the general line of buildings as fixed by the superintending architect in his certificate, but not beyond the line of the stable, chapel, and shops before mentioned.

After personally visiting the locality, the magistrate gave his decision that the general line of buildings as defined by the architect was not the true general line of buildings in the street, place, or row of buildings, and that it was necessary to take into consideration the position of the stable to the west, or the other buildings to the east, or of all of them, and decided that the defendant had not built beyond the true general line of buildings. Had he confined himself to the houses forming Newton Terrace, or to the houses between Brandram Road and the boundary of Hurst Lodge, his decision would have been the same as the architect's; but in his opinion there was no ground in fact for selecting that portion of the road and

laying down a special line for it, and he therefore dismissed the summons subject to the opinion of the Court on a Special Case.

The Special Case was heard in the Queen's Bench Division before Lord Coleridge, C.J., Stephen, J., and Mathew, J., and judgment was given for the complainant, with leave to appeal.

By section 75 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), it is provided that "No building, structure, or erection shall, without the consent in writing of the Metropolitan Board of Works, be erected beyond the general line of buildings in any street, place, or row of houses in which the same is situate, in case the distance of such line of buildings from the highway does not exceed fifty feet, or within fifty feet of the highway when the distance of the line of buildings therefrom amounts to or exceeds fifty feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway, such general line of buildings to be decided by the superintending architect to the Metropolitan Board of Works for the time being; and in case any building, structure, or erection be erected, or be begun to be erected or raised, without such consent, or contrary to the terms and conditions on which the same may have been granted, it shall be lawful for the vestry of the parish, or the board of works for the district in which such building or erection is situate, to cause to be made complaint thereof before a Justice of the peace, who shall thereupon issue a summons requiring the owner or occupier of the premises, or the builder or person engaged in any work contrary to this enactment, to appear at a time and place to be stated in the summons to answer such complaint; and if, at the time and place appointed in such summons, the said complaint shall be proved to the satisfaction of the Justice before whom the same shall be heard, such Justice shall make an order in writing on such owner or occupier, builder or person, directing the demolition of any such building or erection, or so much thereof as may be beyond the said general line so fixed as aforesaid."

Charles, Q.C., and *Channell*, for Spackman, the appellant. — The question is whether the certificate of the architect conclusively decides the general line of buildings, or whether the magistrate has jurisdiction to decide it for himself. This question has been decided in the affirmative by the Court of Common Pleas in *St. George's Hanover Square* v. *Sparrow* (1) and *Simpson* v. *Smith* (2), while a contrary opinion was expressed by the Court of Queen's Bench in *Bauman* v. *St. Pancras* (3). By section 143, now repealed, of 18 & 19 Vict. c. 120, there was no proceeding before a magistrate, but the district board were authorised to pull down a building which was beyond the regular line of a street, subject to an action of trespass by the owner, when the regular line would be decided by a jury. This section substitutes the magistrate for the jury, and he is to decide the regular, or, as it is now called, the general line. The "complaint" must be proved to his satisfaction. There is no provision putting the architect of the Metropolitan Board in the position of an arbitrator, nor anything in the Act binding him to hear the parties. The hearing is not until the parties come before the magistrate.

They also referred to *Cooper* v. *The Wandsworth Local Board* (4), in which it was held, under section 76 of 18 & 19 Vict. c. 120, that a house could not be demolished without giving the owner an opportunity to shew cause. *Wandsworth* v. *Hall* (5) was referred to as explaining *St. George's Hanover Square* v. *Sparrow* (1). *Paddington* v. *Snow* (6) was also referred to.

Willis, Q.C., and *J. L. Walton*, for the respondents.—The magistrate had no jurisdiction except to decide whether there was

(1) 16 Com. B. Rep. N.S. 209; 33 Law J. Rep. M.C. 118.

(2) 40 Law J. Rep. M.C. 89; Law Rep. 6 C.P. 87.

(3) 8 B. & S. 446; 36 Law J. Rep. M.C. 126; Law Rep. 2 Q.B. 528.

(4) 32 Law J. Rep. C.P. 185.

(5) 38 Law J. Rep. M.C. 69; Law Rep. 4 C.P. 84.

(6) 45 Law Times, N.S. 475.

an erection, whether it was in excess of the general line, and whether there had been a consent of the Metropolitan Board. The general line is for the architect of the Metropolitan Board to decide as between the local board and the owner. He is in the position of an arbitrator, and must hear the parties. The 18 & 19 Vict. c. 122. s. 62, provides for the appointment of a superintending architect, who is to be a "fit person," and he must not practise as an architect or follow any other occupation.

They cited *Tear* v. *Freebody* (7).

Section 9 of the Amending Act of 1882 (45 & 46 Vict. c. 42. s. 14) seems to assume the correctness of the view taken by the Court of Queen's Bench.

Charles, *Q.C.*, in reply.

Cur. adv. vult.

BRETT, M.R. (on July 12).—In this case an extremely difficult question arises, and there has been much difference of opinion about it. A summons was taken out against Spackman for erecting a building beyond the general line of buildings in the street in which the building was. The architect of the Metropolitan Board of Works had given a certificate as to what was the general line of buildings in the street. The magistrate saw the street, and came to the conclusion that the general line was not as certified. He thereupon declined to make an order that the building should be pulled down. It is said that the certificate was conclusive, and that the magistrate had no jurisdiction to enter upon the question of the general line. It is contended that he might not question that fact, but was bound to make the order if the building was beyond the certified line. It is difficult to express the importance of the considerations which arise upon this contention. A man builds a house upon his own land and at his own cost upon a spot adjoining a street. It may be that every one who saw it would say that he had not built beyond the line and had not contravened the real object of the statute. It may be that the architect has taken a too strictly mathematical view; he may even acknowledge that he has done so: and yet it is said that the owner is forced to pull the building down, when the architect has made a mistake, and that the legal tribunal before which the matter comes is bound to make an order to do that monstrous injustice. It may be that this is the law. We may have to come to the conclusion that the Legislature has inadvertently committed this gross injustice; but the mind revolts against such an interpretation of the statute, and struggles against such a conclusion. The matter turns on section 75 of the Metropolis Management Amendment Act, 1862. The words are capable of the strictest construction contended for; but Chief Justice Erle, Justices Willes, Byles, and Keating, in 1864, after fully considering the matter, acted on this rule of construction: if the words in the Act of Parliament, though capable of an interpretation which would work manifest injustice, can possibly within the bounds of grammatical construction and reasonable interpretation be otherwise construed, the Court ought not to attribute to the Legislature what is a clear, manifest, and gross injustice. Acting on this principle they gave an interpretation to this section. The section then came before the Court of Queen's Bench, of which Lord Chief Justice Cockburn was a member, and the opinion of the Court of Common Pleas was dissented from. The same question afterwards came again before the Court of Common Pleas, of which I was a member, and Mr. Justice Willes and Mr. Justice Keating, two of the Judges in the former case. I was the third Judge. We had this section before us, and the observations of the Lord Chief Justice in the Court of Queen's Bench. Every point was taken which has been urged in the argument before us in this case. Nothing has been added. The most anxious pains were taken to consider the objections of the Lord Chief Justice, the words of the statute, and the rule of interpretation, and we gave a deliberate judgment that the Legislature did not mean to destroy the value of a man's own money expended on his own property without the usual safeguards. It is hardly possible to suppose that the Legislature intended to make a single person sole arbitrator of a man's right of property on his own land. It is hardly

(7) 4 Com. B. Rep. N.S. 228.

conceivable that this should be so when in trivial cases there is an appeal from one Court of justice to another. Looking through the Act we could not find that the architect must even hear either party or any evidence before giving his certificate. I can see no answer to the objection that, after a man has built his own house on his own land at his own cost, an architect, sitting in his own room, without hearing the parties or seeing the property, may make an order so that all that has been done may be pulled down and destroyed. If this decision is upheld it is said that the architect becomes an arbitrator; but that, in my opinion, is a clear *petitio principii*. Having argued the first case in the Common Pleas, and having heard the arguments of the Judges in that case and heard the arguments in the second case both of counsel and Judges, it is not likely that my opinion can be changed so that I should think the rule of construction is bad or hesitate to apply it here. There stands the judgment of Mr. Justice Willes, and I do not go through the arguments again. Having heard the arguments in this case, I indorse what he said. What is the line of buildings is a reality, a fact. How is it to be determined? We start, let us suppose, with a road in which there are no houses. Two or three first owners build their houses back from the road. The architect may give his certificate after the next owner who builds has built his house, and he is obliged to put it back. In the next case the architect may change his mind and give a certificate for another and altogether different line of buildings. It is said that he is more competent than the magistrate to decide this question; but as to all other points which may be raised the magistrate can decide, as is admitted, but not as to this one. I have the strongest conviction on this subject, and I am bound to state it—that, according to the decision of the Divisional Court, clear and gross injustice is done. The true construction of the 75th section is to give power to the architect to decide, but not to prevent the magistrate from saying that his decision is unjust.

FRY, L.J.—The judgment which I am about to read is that of myself and Lord Justice Bowen. The questions in this Case, which has been stated by a metropolitan magistrate, arise on the construction of the 75th section of the statute 25 & 26 Vict. c. 102, which deals with the general line of buildings in the streets and other places in the metropolis.

The first question stated by the magistrate is, whether he is bound by the architect's certificate as conclusive, or ought to have considered for himself what the true general line of buildings was. This is a point which has been several times before the Courts prior to the decision now under appeal, and which has elicited a great diversity of opinion. In the cases of *St. George's* v. *Sparrow* (1) and *Wandsworth* v. *Hall* (5) eminent Judges of the Court of Common Pleas expressed an opinion that the certificate of the architect was not binding on the Justice, and in the case of *Simpson* v. *Smith* (2) that Court decided the question in accordance with their previously expressed opinion. But, on the other hand, in the case of *Bauman* v. *St. Pancras* (3), the Lord Chief Justice Cockburn and Mr. Justice Mellor criticised the case of *St. George's* v. *Sparrow* (1), and expressed the opinion that the certificate of the architect was final and binding on the Justice.

In such a diversity of opinion on the point in controversy, we think that the Queen's Bench Division were right in considering that they were not precluded by authority from determining the question on its merits. We shall pursue the same course, not regardless of the views enunciated by the various Judges who have expressed their opinions, but supported by remembering that in our conclusion, whatever it may be, though we must differ from some great authorities, we must also be in accordance with others. Before proceeding to the section in question, it is desirable to observe that a general scheme for regulating the buildings in the metropolis was introduced by the Act of 1855 (18 & 19 Vict. c. 120); that that Act laid down certain general rules as to buildings, and created a body of district surveyors to give effect to these rules; that it placed the Metropolitan Board in a certain position

of headship over the district boards (section 55 *et seq.*); that it required the Metropolitan Board to appoint an officer, termed a superintending architect of metropolitan buildings (section 62), to whom (unless otherwise ordered) the district surveyors were to make returns, and who was to exercise a supervision over the proceedings of the district surveyors, and to receive from them the fees paid to them (sections 54 and 65); and that his signature, counter-signed by the chairman, was made the proper evidence of the board's approval of any plans or particulars (section 58). Lastly, section 143 enabled any vestry or district board to pull down any buildings which projected beyond the regular line of buildings—leaving the question what was such regular line to be determined, if necessary, by a jury, on an action of trespass brought by the building owner against the board.

In 1862 the Act in question was passed for the amendment of the Act of 1855. The 75th section repealed the 143rd section of the Act of 1855, and also the provision of an earlier Act with regard to one particular road in the metropolis, and then proceeded to deal with two distinct cases—first, the case of a person building beyond the general line, in case the distance of such line of buildings from the highway does not exceed fifty feet; and, secondly, the case of a person building within fifty feet of the highway where the distance of the line of buildings therefrom amounts to or exceeds fifty feet. As the present question arises on the former of these cases, we may omit so much of the section as deals with the second case, and then the enacting words will be as follows:—

"No building, structure, or erection shall, without the consent in writing of the Metropolitan Board of Works, be erected beyond the general line of buildings in any street, place, or row of houses in which the same is situate, in case the distance of such line of buildings from the highway does not exceed fifty feet, such general line of buildings to be decided by the superintending architect to the Metropolitan Board of Works for the time being; and in case any building, structure, or erection be erected, or be begun to be erected or raised, without such consent, or contrary to the terms and conditions on which the same may have been granted, it shall be lawful for the vestry of the parish, or the Board of Works for the district in which such building or erection is situate, to cause to be made complaint thereof before a Justice of the peace, who shall thereupon issue a summons, requiring the owner or occupier of the premises, or the builder or person engaged in any work contrary to this enactment, to appear at a time and place to be stated in the summons, to answer such complaint; and if, at the time and place appointed in such summons, the said complaint shall be proved to the satisfaction of the Justice before whom the same shall be heard, such Justice shall make an order in writing on such owner or occupier, builder, or person, directing the demolition of any such building or erection, or so much thereof as may be beyond the said general line so fixed as aforesaid, within such time as such Justice shall consider reasonable."

It appears to us that one line only is spoken of throughout this section—namely, the general line of buildings; that, as regards each case under discussion, one decision of that line only is referred to—namely, the decision of the architect—and that decision is to be valid for all the purposes of the section in such case; and the pointed reference to this decision of the architect in the direction to be given by the magistrate—namely, to pull down the whole building, or so much thereof as may be beyond the said general line so fixed as aforesaid—appears to us to emphasise the proposition that the decision or fixing of the line by the architect is to be adopted by the magistrate if the rest of the case be made out to his satisfaction.

If the architect and magistrate are both to fix the line, it is conceivable that they may fix it differently. If they fix it in the same place no question can arise; but if they should fix it differently one or other of two cases must occur: If the architect's line be in advance of the magistrate's, the magistrate cannot act upon his judgment and order the demolition of so much of the building as is in excess of his line—he can order only so much as is in excess of the architect's. If, on the other hand, the

magistrate's line be in advance of the architect's, then, according to the contention of the appellants, the magistrate can order only so much of the building to be pulled down as is beyond his own line, whereas the statute speaks of the demolition of so much of the building as may be beyond the said general line as fixed by the architect. These observations seem to us to shew that the statute not only contemplated only one line, but only one decision as to that one line in each particular case in controversy before the Justice.

It appears to us that there is nothing unreasonable or improbable in the conclusion that the power of finally determining this line should be vested in the superintending architect of the Metropolitan Board. He is, as we have already shewn, an officer filling a responsible position under the Metropolitan Board; that board is itself entrusted with large powers of superintendence over the metropolis and over the vestries and districts. The question to be determined is one of a technical character, on which the Legislature might think an architect as good a judge as a magistrate, and it may have been thought that such a reference was more likely to secure uniformity of decision than leaving the question open to each magistrate before whom it might come.

It seems to us improbable that the Legislature should have contemplated that the same line should be twice decided in each case between the building owner and the board, and that each decision should retain a certain validity, so that if the magistrate's line was behind the architect's the architect's should govern the extent of demolition, and if the architect's line was behind the magistrate's the magistrate's should prevail. The case would have been different if the second decision had been pronounced by way of appeal, and the magistrate who heard the appeal had been authorised to give effect to his decision by demolishing down to the line as ascertained by himself, which, as already shewn, is not the case.

It has been suggested that the Legislature are not likely to have required any proceedings before the magistrate if this question was not open to his decision, and if, to use the language of Lord Chief Justice Erle (8), he was to act under the command of the superintending architect. But it appears to us that after the architect's decision several questions might arise and require judicial determination. The magistrate might have to determine—(1) whether the building complained of was a building, structure, or erection within the meaning of the Act; (2) whether the distance of the line of buildings from the highway was less than fifty feet; (3) whether the superintending architect had fixed the general line of buildings for the case in hand; (4) whether the Metropolitan Board had given any consent; (5) whether that board had imposed any conditions, and, if so, (6) whether these conditions had or had not been broken; (7) whether the thing complained of was beyond the line laid down; and (8) within what time it was reasonable that the demolition should be made.

Several points have been raised incidentally as to the time, manner, and character of the decision to be given by the architect.

The case before us is not addressed to any question as to the validity or propriety of the decision given by the architect, but only to the duty of the magistrate to reconsider the question for himself, and therefore these points do not require detailed discussion or final decision. It may be enough to observe that in our opinion any duty of deciding the line in question cast upon the architect ought to be performed by him with a due regard to the interests, no less of the building owner than of the public, both as regards the time when the decision shall be given and the mode of arriving at the decision. We cannot think that the silence of the statute on the details of the architect's procedure exonerates him from this obligation, and we think that this obligation would rest on him equally whether his decision were final or not, for, on any construction of the statute, his determination of the line is a matter of moment to both parties, as the magistrate can never go beyond it.

For these reasons, and notwithstanding

(8) 16 Com. B. Rep. N.S. 217.

the distrust which we always feel when differing from the Master of the Rolls, we are constrained to hold that the decision below was right and that this appeal should be dismissed.

Appeal dismissed.

Solicitors—George Whale, for the Board of Works; Messrs. Saw & Son, Greenwich, for Spackman.

[IN THE COURT OF APPEAL.]

1884. June 20. THE QUEEN *v.* EDWARDS (*Justice*) AND THE EASTERN AND MIDLAND RAILWAY COMPANY.*

Lands and Railways Clauses Acts—Jervis's Act—Compensation not exceeding 50*l.* —"*Settlement by Two Justices*"—"*Order*"—"*Damages directed to be paid*"—8 *Vict. c.* 18. *ss.* 22 *and* 24—8 *Vict. c.* 20. *ss.* 6, 16, *and* 140—11 *&* 12 *Vict. c.* 43. *s.* 11.

The "settlement" of compensation by two Justices for lands taken or injuriously affected, under section 22 *of the Lands Clauses Act,* 1845, *is not an "order" within Jervis's Act, and the complaint need not be made within six months of the matter arising; neither is it a decision by which "damages are directed to be paid" enforceable by distress within section* 140 *of the Railways Clauses Act,* 1845.

In re Edmundson; The Queen *v.* The Leeds and Bradford Railway Company (17 Q.B. Rep. 67; 21 Law J. Rep. M.C. 193) *overruled.*

Appeal of George Henry Morse from the order of Lord Coleridge, C.J., and Cave, J., making absolute a rule for a *certiorari* to quash the adjudication by certain Justices of Norfolk of the sum of 50*l.* as compensation for the appellant being injuriously affected by the taking of an occupation road by the Eastern and Midland Railway Company for the purposes of their railway.

The adjudication by the Justices was made on the 15th of January, 1884, upon a claim for 50*l.* made on the 1st of January preceding. The line had then been finished for two years. The Court below, following *In re Edmundson* (1), made the rule absolute, on the ground that six months had elapsed from the injurious affection, and that therefore, under Jervis's Act, the Justices had no jurisdiction. Leave was given to appeal.

By section 6 of the Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20), it is provided that "in exercising the powers given to the company by the special Act to construct the railway and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act; and the company shall make to the owners and occupiers of, and all other parties interested in, any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise as regards such lands of the powers by this or the special Act or any Act incorporated therewith vested in the company; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof."

By section 22 of the Lands Clauses Consolidation Act (8 Vict. c. 18) it is provided that "if no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

(1) 17 Q.B. Rep. 67; 21 Law J. Rep. M.C. 193.

enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed 50*l.*, the same shall be settled by two Justices."

By section 11 of Jervis's Act (11 & 12 Vict. c. 43), entitled "An Act to facilitate the performance of the duties of Justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," it is provided that, "in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose."

French and *Synnott*, for the appellant.—Jervis's Act does not apply. The "settlement by two Justices" under section 22 of the Lands Clauses Act, being the manner provided for "ascertaining and determining" the amount of compensation by the Railways Clauses Act when no more than 50*l.* is claimed, is not a "conviction or order" within the meaning of Jervis's Act. The Railways Clauses Act refers to provisions of the Lands Clauses Act for enforcing the payment of the compensation, but no such provisions exist. The practice is to bring an action on the award, and this practice applies whatever the sum claimed. Section 140 of the Railways Clauses Act, which provides for enforcing by Justices' distress warrant the payment of "damages, costs, or expenses by this or the special Act or any Act incorporated therewith directed to be paid," does not apply to compensation for lands injuriously affected, because it is not "damages," and it is not "directed to be paid." That section applies to damages other than compensation—*e.g.* under section 58.

[BOWEN, L.J. — That section contemplates the repair of damage, not the recovery of damages; it provides a penalty.]

Still, the compensation is not "directed to be paid," so that the summary remedy does not apply. *In re Edmundson; The Queen* v. *The Leeds and Bradford Railway Company* (1), in which it was held in 1852 by Lord Campbell, C.J., Wightman, J., Erle, J., and Crompton, J., that the six months' limit applied to claims under 50*l.* for lands injuriously affected, was wrongly decided. It was distinguished in *The Queen* v. *Hannay* (2) by Blackburn, J., Quain, J., and Archibald, J., deciding that the limit did not apply to claims for land taken. He also cited *The Queen* v. *Combe* (3), holding that the Justices under section 121 of the Lands Clauses Act need not give their decision in writing. They are therefore in the position of arbitrators, such as the arbitrators who may be appointed for claims over 50*l.*

R. S. Wright, for the respondent.—Every judicial act of Justices is either an order or a conviction. This is a conviction. Jervis's Act is exhaustive, was passed after the Railways and Lands Clauses Acts, and was intended to include them. The procedure to be adopted is laid down in sections 22 and 24 of the Lands Clauses Act. The parties are, by section 24, to be summoned, witnesses to be sworn, and the Justices are to hear and determine and to decide on costs. All this amounts to an order. *In re Edmundson* (1) was rightly decided. In *Morant* v. *Taylor* (4) the same rule was applied to an order made for the demolition of a building. He also cited *Sweetman* v. *Guest* (5).

BRETT, M.R.—I could have supposed that either the decision in *In re Edmundson* (1) or in *The Queen* v. *Hannay* (2) was right, but, except for the purpose of

(2) 44 Law J. Rep. M.C. 27.

(3) 32 Law J. Rep. M.C. 67.

(4) 45 Law J. Rep. M.C. 78; Law Rep. 1 Ex. D. 188.

(5) 37 Law J. Rep. M.C. 59; Law Rep. 3 Q.B. 262.

evading *Edmundson's Case* (1), I do not see how *Hannay's Case* (2) could have been decided as it was and *Edmundson's Case* (1) supported.

The distinction taken in *Hannay's Case* (2) is ingenious, but it is a judgment in which the same Court was sitting, and the Judges were, by judicial comity, bound to respect the previous decision, but they were clearly of opinion that it was wrong, but that they must not overrule it. If an appeal could have been brought, *The Queen* v. *Hannay* (2) would probably have been differently decided. As it was, the Judges distinguished it by a shadow of a shadow. The distinction, in fact, does not exist. We are left with *In re Edmundson* (1) and *The Queen* v. *Hannay* (2); both were decided some years ago, and we have to choose between them. They are opposite decisions. The rules as to following old decisions do not apply in this case. It is not a case in which people have made contracts or acted in the faith that the law was as laid down in a certain decision. It is a decision upon jurisdiction, and the Court of Appeal may, at any distance of time, overrule such a decision. The House of Lords would not consider itself bound by *In re Edmundson* (1). It, however, governs this case without distinction. The claim was under section 6 of the Railways Clauses Act. I do not undertake to say whether it was under section 16. My view is, that if the sections apply to the same matter they apply for different purposes. The claimant, if he had a good title, had a claim to compensation. How was that to be determined? By two tribunals, in case of dispute. Two questions may arise: first, whether the claimant can claim anything—that is the question of title; secondly, the amount of compensation. To my mind, these questions are to be decided by different tribunals. There is no authority in the magistrates to decide a question of title. It would be contrary to every idea of English law to give them such authority by implication, and there is no such implication from those Acts. For the amount of compensation under section 6 we are referred back to sections 22 and 24 of the Lands Clauses Act. If the parties do not agree, the compensation is to be settled by two Justices, as distinguished from the title.

Section 24 provides that "it shall be lawful for any Justice, upon the application of either party with respect to any question of disputed compensation authorised to be settled by two Justices"—that is, under section 22, where the claim is not more than 50*l*.—"to hear and determine such question"—that is, the amount of compensation, being one of the questions in dispute. Is that a decision within section 140 of the Railways Clauses Act? That section applies to damages "directed to be paid." The compensation has not been directed to be paid because the question of title remains undecided. What would be the effect of giving the section the other construction? The amount may be demanded, and, if not paid within seven days, may be recovered by distress, and yet after all the claimant may have no title. If this adjudication of the Justices is an order at all, it must be an order to pay; but it is not an order to pay, because the title is not admitted. The case is therefore not within section 140. The Justices have not made an order at all. It is a mere assessment or ascertainment of compensation, if due, just as the finding of the jury is a finding of what may eventually be found to be due. The decision of the magistrates under section 24, in my opinion, is not an order at all; so it is not within section 140, and not within Jervis's Act. With all deference to the eminent Judges who decided *In re Edmundson* (1), the working of these Acts was not, as my brother Bowen suggested in the course of the argument, known as it is now. Since *Edmundson's Case* (1) and *Hannay's Case* (2) are not distinguishable, I think the time has come, upon the invitation of the Court below, to overrule *Edmundson's Case* (1), which I think was wrongly decided.

BOWEN, L.J.—I am of the same opinion. *Edmundson's Case* (1) is exactly and directly in point, and no distinction can be drawn between it and the present. The question is, whether the decision of Justices under sections 22 and 24, in a case of a dispute as to the amount of compensa-

tion where the claim does not exceed 50*l.*, is an "order." *Edmundson's Case* (1) decided that it was. We ought, I think, to have much hesitation in overruling a decision of long standing. It is true that the point in *Edmundson's Case* (1) is not one which has been taken for granted so that people have altered their position, except that some may not have prosecuted their rights; but that consideration is not enough, and it is necessary in ordinary cases *stare decisis*. In this instance, however, there was no appeal at the time when the case was decided, and doubt has been thrown upon it every time the case was before the Courts. Whether the distinction taken in *Hannay's Case* (2) is or is not a sound distinction, the Judges who decided it would not have followed *Edmundson's Case* (1) if they could have avoided it. In *The Queen* v. *Combe* (3), Sir John Mellor, who was specially competent in railway cases, said that the decision of Justices in these cases was not an order. The case has been logically impeached, and we are invited by the Court below to revise it. The basis of the reasoning supporting it is that a proceeding for compensation is a proceeding for redress, and a complaint of *quasi* injury for injurious affecting as distinguished from taking. It was considered to be in the nature of relief. But under sections 22 and 24 all the Justices have to do is to settle the compensation and to hear and determine the disputed question of compensation. The reason why their jurisdiction is not ousted is that the question of title is not raised, but left open. Then can it be said that this is "a direction as to damages" within section 140? When the Act gives a power of distress for damages, it means damages effectually obtained, not where a question of liability is left outstanding. Section 140 is wholly inapplicable to a case in which a question of right between the parties is undetermined. The decision of the Justices is not an order at all. It is not an order, but a decision, which neither directly nor impliedly directs anything to be done, and imposes no penalty. It is not in popular language an order, and it is not made an order by the statute.

FRY, L.J.—I concur in the reluctance which has been expressed to overrule a case decided so long ago. It would be different if the case had been concurred in; but, looking to what has been said about it, I think we are bound to consider whether it is right or wrong. The Court of Queen's Bench considered that the magistrate's decision was an order. Lord Campbell and Mr. Justice Erle came to the conclusion that it fell within section 140; but that section deals with damages "directed to be paid." There was in this case no direction to pay, but only an ascertainment of the amount. In point of form there was no direction to pay, and none in substance. There is a further question—that is, that of title. The section is only one of a series making a machinery to obtain a decision on the quantum, leaving the question of title to other Courts. This is only one of the modes. That of a jury and arbitrators are parallel cases. The Justices have no more power to direct payment than the jury or the arbitrators. Section 140 deals with the case in which the Justices have ordered damages to be paid. Section 142 is part of the same fasciculus of sections, and shews the distinction between these ascertainments of amount and orders for payment of sums. The language in this section differs from that of the other section. I think *In re Edmundson* (1) was wrongly decided.

Appeal allowed.

Solicitors—A. R. Oldman, agent for Overbury & Gilbert, Norwich, for appellant; Mathews & Browne, for respondent.

[IN THE COURT OF APPEAL.]

1884. May 29. } THE QUEEN *v.* THE WEST BROMWICH SCHOOL BOARD.*

Poor—Rating—School Board—Land owned and Land rented by School Board—Elementary Education Act, 1870 (33 & 34 *Vict. c.* 75), *ss.* 18, 19, 21, 22, *and* 53—6 & 7 *Will.* 4. *c.* 96. *s.* 1.

A school board formed under the Elementary Education Act, 1870, *is liable to be assessed to the poor rate, both in respect of schools built upon land belonging to the board, and in respect of schools rented by the board as tenants, even though the board make no profit out of such schools.*

Judgment of the Queen's Bench Division affirmed.

Appeal by the West Bromwich School Board from the judgment of the Queen's Bench Division on a Special Case stated on appeal from an order of Quarter Sessions confirming a poor rate made and assessed upon certain school premises belonging to the board.

The material facts set out in the Special Case were as follows :—

The appellants are the school board constituted under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), for the parish of West Bromwich, in the county of Stafford.

The respondents are the churchwardens and overseers of the poor of the parish of West Bromwich and the assessment committee of the West Bromwich Union.

The West Bromwich School Board, under the powers of the Education Act, 1870, purchased the site of and erected certain elementary schools, and also purchased certain other schools. The total cost of these schools was 24,633*l.*

These sites and schools were conveyed to them, in accordance with the Elementary Education Act, 1870, "unto and to the use of the said school board, their successors and assigns for ever, and so that the same land, hereditaments, and premises shall be held upon trust for the purpose of a public elementary school within the meaning of the Elementary Education Act, 1870, and for or towards the provision, in manner thereby authorised, of sufficient public school accommodation for the aforesaid district, and for no other purpose whatsoever."

The school board also rent certain schools from year to year under various agreements, which were set out in the appendix to the Special Case.

Neither the school fees, nor the moneys provided by Parliament, nor moneys raised by way of loan (if any) or in any manner whatever received by the school board, have, without contribution from the rates, been sufficient to meet the ordinary and reasonable expenses of the school board, and there has in every year been a deficiency, in respect of which the school board have been compelled to require a rate to be levied, and the deficiency has been made good out of such rate in accordance with the Act.

On the 1st of July, 1882, a rate and assessment for the relief of the poor of the parish of West Bromwich and for other purposes chargeable thereon was made, after the rate of 1*s.* 4*d.* in the pound, on the property of the school board, such rate being made on the basis of the valuation list.

The school board contend that they have no occupation of the schools and premises, nor any beneficial occupation, nor could any tenant, under the same restrictions, have any beneficial occupation of any of the schools and premises. The assessment committee fixed the rateable value of the several schools at the amounts set out in the valuation list. The school board appealed to the Quarter Sessions, and the Quarter Sessions confirmed the assessment, subject to the opinion of the High Court on a Special Case.

The question for the opinion of the Court was whether the appellants were rateable to the relief of the poor in respect of the schools and premises or any of them.

The Queen's Bench Division gave judgment confirming the rate.

The school board appealed.

Wills, Q.C., and *John Rose*, for the appellants.—The question raised by this appeal is whether the school board is liable to be rated in respect of premises owned by it

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

or occupied by it as tenant solely for the purposes of schools established under the Elementary Education Acts; and the contention on behalf of the appellants is that a school board is limited by statute as to the way in which it can use land conveyed or leased to it, that the hypothetical tenant would be bound by the same statutory restrictions as the board, and therefore that, on the true construction of 6 & 7 Will 4. c. 96, no profit can be made out of the land: so that the board ought to be rated at nothing. 33 & 34 Vict. c. 75. s. 21, enacts that land conveyed to a school board is to be "held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of such purposes which may be specified, and for no other purpose whatever." The principles laid down by Blackburn, J., in his opinion in *The Mersey Docks* v. *Cameron* (1), which was adopted by the House, establish that the occupation must be of value beyond what is required to maintain the property. Lord Westbury, in his judgment in the same case, says that the property must be capable of yielding a clear rent over and above the necessary outgoings; and Lord Cranworth in his judgment says that the occupier of a barren rock was not intended to be rated to the poor rate. In this case the school board is in that condition, and any tenant who took the land from the board would be in the same position; he would be a tenant under a disability, he would have to take from the board subject to the statutory restrictions by which the board is bound. There is nothing in the Elementary Education Acts to shew that school boards may make a profit; the Act rather implies they cannot do so; in the Public Health Act of 1848 there was nothing which forbade local boards of health from making a profit out of the supply of water, and yet in *The Corporation of Worcester* v. *Droitwich* (2) it was held that they could not do so.

[BRETT, M.R.—Was it not held in that case and in the cases about sewers that the local authorities could not let the land acquired by them?]

The respondents may rely upon *The Queen* v. *The Metropolitan Board of Works* (3); but that case is inconsistent with the later cases, and Hannen, J., expressed doubts as to its correctness in *The Metropolitan Board of Works* v. *West Ham* (4). In *The Mayor of Liverpool* v. *Wavertree* (5) it was held that the land ought only to be rated upon such a rent as the tenant would give, regard being had to the restrictions imposed by the statute; and in *Hare* v. *The Overseers of Putney* (6) Brett, L.J., held that beneficial occupation was the test of rateability.

[FRY, L.J.—"The occupier" means any occupier, so that it is not enough to shew that the tenant who occupies the land at the moment cannot make any profit out of it.]

In *The Mayor of Peterborough* v. *Stamford* (7) the principle contended for by the appellants was adopted.

The Overseers of Chorlton-upon-Medlock v. *The Guardians of Chorlton Union* (8), and 33 & 34 Vict. c. 75, ss. 5, 10, 18, 19, 20, 21, 22, 53, and 54, were referred to.

Jelf, Q.C., for the respondents, was not called on.

BRETT, M.R.—In this case the question is raised whether certain premises occupied by a school board are liable to be rated to a poor rate.

The property with respect to which this question arises consists of two kinds, one of which belongs to the board, while the other kind is occupied by the board as tenants. Now the law is that the person to be rated is the person who occupies the premises, but only if the property which is occupied has a beneficial value. It is suggested that the test to be applied is the beneficial value which would be derived from the taking the property by a hypothetical tenant from

(1) 11 H.L. Cas. 443; 35 Law J. Rep. M.C. 1.
(2) 46 Law J. Rep. M.C. 241; Law Rep. 2 Ex. D. 49.
(3) 38 Law J. Rep. M.C. 24; Law Rep. 4 Q.B. 15.
(4) 40 Law J. Rep. M.C. 30; Law Rep. 6 Q.B. 193.
(5) Law Rep. 2 Ex. D. 55*n*.
(6) 50 Law J. Rep. M.C. 81; Law Rep. 7 Q.B. D. 223.
(7) 31 W.R. 949.
(8) 51 Law J. Rep. Q.B. 458.

year to year, who being a man in possession of his ordinary senses would take the property and would pay for it; so that the question to be determined is whether the property is in such a condition that the owner could get such a tenant as this hypothetical tenant who would pay a rent for the occupation of the property. This explanation is, I think, not unlike that given by Mr. Justice Cave in *The Overseers of Chorlton-upon-Medlock* v. *The Guardians of Chorlton Union* (8), where he said, "It must be asked what rent they"—that is, the premises to be rated—"would fetch in the market if the owner wished to let them; and though a restriction on the use of the tenements would have to be taken into consideration, a restriction on the profits in the case of a particular tenant cannot be regarded." It appears to me that if the owner of the property could only let it to a tenant to whom by law no benefit could possibly arise from his occupation, then the property would be of such a nature that no tenant such as I have described would take the property. If, however, the hypothetical tenant could possibly obtain a benefit from his occupation, but by his mere volition does not do so, then the premises would have a potentiality of beneficial value, because he would have the power of obtaining a benefit from his occupation of the property. I think that I have in what I have to-day said confirmed the effect of what Mr. Justice Cave said in the case to which I have already referred, and what I myself said in *Hare* v. *The Overseers of Putney* (6); and I think that if the property can have no beneficial value, then the property is not rateable—or, to use the phrase which is said to be more correct, "it ought to be rated at nothing."

How, then, ought the principles which I have attempted to enunciate to be applied to the two different classes of property which we have to consider in this case? To consider first the property which this school board rents: Could the owner of that property find a hypothetical tenant who would give anything for the use of that land? If he could, then the hypothetical tenant would pay rent for it; and the landlord could obtain for the land on which the schools are built a rent, and the school board itself does pay rent for this land. It is said that that land is not of any beneficial value to the board; but even if that be true, that is not the test: the true test is whether the owner of the land or premises could find a hypothetical tenant who would give rent for it. The land, therefore, thus rented by the school board is rateable; the occupier is the person to be rated, and the appellants are the occupiers.

Turning now to the land and premises of which the school board are the owners, I am of opinion that if by statutory enactment the school board could only use them in a way in which they could never produce any benefit or value, and could never produce for them anything beyond their expenses, then such premises would in their hands have no beneficial value; and if they could never, in consequence of such statutory enactment, be let at all, then there could never be any one who could be a tenant to the board. If the owner can never make any value out of the land, then the hypothetical tenant takes it in the same way as the owner, and subject to the same conditions as those which affect it in the owner's hands, so that no profit can ever arise from it. Such were the circumstances in *The Mayor of Worcester* v. *The Droitwich Union* (2), and such were the facts in *The Mayor of Peterborough* v. *Stamford* (7), for there the land was acquired under the provisions of a statute, and no profit could be made out of the undertakings; the waterworks authority could not let the land, they could in fact make nothing out of it; so that the hypothetical tenant must in those cases have taken the land subject to the same statutory restrictions as those under which the owners had to use it; no tenant for it could therefore be found: there was therefore no beneficial value in the land, and there was no one who could be rated for the land.

If the school board had no power to lease the land acquired by them, then the question would be whether the school board were prevented by statute from making any profit from the use of the land. It has been urged that the whole scope of the Elementary Education Acts

shews that the school fees must be reduced if the receipts exceed the expenses. I think that if that were so, then it might be said the board is prevented by implication from making any profit; but I think that the Court ought to be very careful in implying in a statute that which is not found there, and I doubt whether we ought, when there is no express enactment as to lowering the fees, to imply any such provision; and if the case is in fact a *casus omissus*, then we ought not to make any such implication. It is, however, not necessary to decide this point, as we find that the board have power to lease their property to a tenant. It may be that there are conditions which are conditions precedent to the exercise of that power; but still they can lease their property, and there is no absolute statutory restriction on that power, nor are there any statutory terms imposed on the exercise of that power: so that they can get a tenant who could use the property in the ordinary way, and he could have a beneficial occupation, so that the board could get a hypothetical tenant who would pay rent for the land; and if this be so, then the land owned as well as the land occupied by the board is liable to poor rate, and this appeal must fail.

BOWEN, L.J.—I am of the same opinion. I will assume that the land is not, while in the possession of the school board, capable of beneficial occupation by them. I then turn to the Parochial Assessment Act (6 & 7 Will. 4. c. 96), which says that the test is to be "the net annual value of the several hereditaments rated"—that is to say, "of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes."

If land is struck with sterility by statute when in any and every person's hands, then such land is absolutely sterile; but it does not follow that because this school board cannot use it beneficially, therefore the land must be sterile in every other person's hands. In *The Mayor of Liverpool* v. *Wavertree* (5), cited in the note of *The Corporation of Worcester* v. *Droitwich* (2), Mr. Justice Blackburn said: "The whole question turns on the rule given by the Parochial Assessment Act, which says the occupier is rateable at what a tenant from year to year will give as the rent who takes the land subject to the same restrictions as those under which the tenant holds it." It is impossible not to see that the basis of that judgment was that the land was considered as struck with sterility. In *The Corporation of Worcester* v. *Droitwich* (2) the reasoning was similar, for it was there presumed that the hypothetical tenant could only be a person who would be obliged to use that land subject to the same statutory restrictions as those which affected the corporation. The case of *Hare* v. *The Overseers of Putney* (6) was decided on a similar view, and the cases of *The Queen* v. *The Metropolitan Board of Works* (3) and *The Metropolitan Board of Works* v. *West Ham* (4) travelled on the same lines, and there is nothing in the case of *The Overseers of Chorlton-upon-Medlock* v. *The Guardians of Chorlton Union* (8) which conflicts with the principles which the Master of the Rolls has so well laid down in his judgment.

In the present case part of the hereditaments the rateability of which is questioned is rented by the school board, and those hereditaments are certainly not struck with sterility; neither do I think that the freehold land they have bought is so struck. Such land is bought under 33 & 34 Vict. c. 75. ss. 20 and 21, and those sections do not shew that the board may not alienate or sell or exchange land so bought by them. It is plain from section 22 that a school board can shift its premises, and in such a case an actual tenant would succeed to the board in the occupation of the land: so that there would be a hypothetical tenant who would enter free to use the land as he chose, and in his hands it would become profitable: so that these lands, whether belonging to or occupied by this school board, are within the principle of the rating statute, and this appeal therefore fails.

FRY, L.J.—Under the statute of 43 Eliz. c. 2 every occupier is to be rated; then by

6 & 7 Will. 4. c. 96 the net annual value of the property is to supply the basis for the assessments. I think it follows that no land is to be exempt from liability to rate unless no estimate can be formed of what the rental would be, or unless it could not be let for anything. It is plain that the barren rock referred to by Mr. Justice Lush in *The Metropolitan Board of Works* v. *West Ham* (4) was physically sterile and could have no letting price at all, so that it was not rateable.

There may, however, be a second class of cases in which by statute or by law, quite apart from the volition of the owner or occupier, no profit can possibly arise to any occupier, and in such cases the land is as sterile in everybody's hands as though it were under a volcano, and such land is in consequence not liable to poor rate. This is, however, not the case where a benefit may or may not be received by the occupier at his own choice, for in such cases, even though the tenant does not make any profit out of the land, still the owner is not prevented from making a profit, for if he let the land to some other person he would then receive profit from it. In such cases the land is not sterile, it is only not available for profit while in the hands of a particular person, and this principle applies to that part of the land which is occupied by this school board as tenants. Then with regard to the land which has been bought by the school board, it is clear that a landowner who occupies his own land himself, and who thus may be said to get no profit from it, but who might, if he chose, let it and thus get a profit, is not exempt from liability to poor rates; and this principle applies to the land owned by the board, for although they get no profit from it, still it appears that they could let the land and thus obtain a profit, for there does not seem to be anything which obliges the school board always to occupy the land which they possess. The Elementary Education Acts appear to shew that the board can lease their land if they obtain the consent of the Education Department, and that there is no restriction on their selection of a tenant. I would add that I do not base my judgment on the idea that the school board can make a profit out of their schools. I am not inclined to favour that notion.

Solicitors—Needham, agent for Caddick, West Bromwich, for appellants; Robinson, Preston & Stow, agents for Rowlands & Bagnall, Birmingham, for respondents.

1884. July 11.

THE QUEEN *v.* NILLINS.

Extradition Act, 1870 (33 *&* 34 *Vict. c.* 52), *s.* 26—*Fugitive Criminal—Crime committed in Foreign Country by Person "in Her Majesty's Dominions."*

N., being in Southampton, wrote and sent certain letters containing alleged false pretences to certain persons carrying on business within the jurisdiction of the German empire, thereby inducing them to part with certain goods and deliver them to his order to certain persons in Hamburg. N. also sent to the same persons certain alleged forged cheques in payment:—Held, *on argument of a rule nisi for a habeas corpus, that N. was a fugitive criminal within the Extradition Act*, 1870 (33 *&* 34 *Vict. c.* 52), *s.* 26, *and was rightly committed by the police magistrate to await the warrant of the Secretary of State for his extradition.*

Rule for a *habeas corpus* to bring up the body of one Nillins, who had been committed to prison by the police magistrate at Bow Street to await the warrant of the Secretary of State for his extradition to Germany, which had been applied for by the German Government in respect of charges of forgery and altering bills of exchange and of obtaining goods by false pretences within the jurisdiction of the German empire.

The charge made before the magistrate was that the prisoner had written and sent certain letters containing the alleged false pretences from the town of Southampton in this country to certain persons carrying on business within the jurisdiction of the

German empire, and that by these means such persons had been induced to part with certain goods, some of which were delivered to the prisoner's order at places in Germany, and some in England, and that the prisoner had sent to such persons by post from Southampton certain bills of exchange in payment for such goods, these bills of exchange being, it was alleged, forged; and it was proved that at the time of such letters and bills being sent from Southampton the prisoner was lodging in that town.

The Solicitor-General (*Sir F. Herschell*), with him *The Attorney-General* (*Sir H. James*), *R. S. Wright*, and *Danckwertz*, shewed cause.—There is ample evidence that the crime was committed in Germany, and the applicant being in this country is a fugitive criminal within the Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 26 (1). He cited *The Queen* v. *Jacobi* (2).

Clifton, for the applicant.—The applicant is not a fugitive. The crime was committed in this country by posting the letters. The preamble of the treaty refers to "fugitives from justice"; it cannot be said that the applicant was a fugitive from Germany, as he committed the crime while in England, and was not in Germany at all.

CAVE, J.—I am of opinion that this rule must be discharged, and were it not that my brother Day has some doubt on the question I should think that the words of the Act make the matter perfectly clear. It is called an Act for amending the law relating to the extradition of criminals, and no doubt its main purpose is to prevent a person who has committed a crime in one country from fleeing thence to another and avoiding justice by continuing there, and that is why it is commonly spoken of as the Act for the Extradition of Fugitive Criminals. But it is clear that there may be cases where a person has committed a crime in a foreign country without ever being there, and who therefore could not be said to have fled from that country, and this is why the Act expressly defines the meaning of the expression "fugitive criminal." The word used throughout the Act is "fugitive criminal," so that if there were no definition we should have to consider the meaning of these words; but the term is expressly defined in section 26 as meaning "any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state, who is in or is suspected of being in some part of her Majesty's dominions." It seems clear that the case of the present applicant comes exactly within this section: he is accused of an extradition crime committed within a foreign state; it cannot be seriously contended that he did not commit the crime in Germany; he procured the goods there, he uttered the forged notes there, and, further, they were delivered to the merchant of the port or his agent, and upon these the goods were delivered to his order at Hamburg. It is clear, then, that the crime was committed in a foreign state. But against this it is urged, that to come within the definition he must have fled from that state to some part of her Majesty's dominions, but there is nothing of that in the section. The words are, "who is in or is suspected of being in some part of her Majesty's dominions," and I cannot give these words other than their plain meaning. The object of this definition is clear, for if it were otherwise it would be possible for a man in England to commit a crime in a foreign country, for which at least in certain cases he could not be tried in England, and yet not be liable to be extradited. The Legislature, therefore, in dealing with the case of the escape of a criminal from another country to this, also included the case of a person in this country committing a crime in another.

There is nothing in the treaty with Germany cutting down or limiting the effect of the Act. We have been referred to the preamble, which is, that "persons

(1) The definition of "fugitive criminal" in section 26 is as follows: "The term 'fugitive criminal' means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state, who is in or who is suspected of being in some part of her Majesty's dominions, and the term 'fugitive criminal of a foreign state' means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state."

(2) 46 L. T. 595.

charged with or convicted of the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be given up." These words seem at first to apply only to fugitives from justice, but any difficulty of this sort is overcome by a reference to the 1st article of the treaty—namely, "The high contracting parties engage to deliver up to each other those persons who, being accused of or convicted of a crime committed in the territory of the one party, shall be found within the territory of the other party." Here again the words apply to the case of the applicant.

DAY, J.—I have had some doubt whether the definition contained in section 26 is sufficient to bring the applicant within the term "fugitive criminal." The main object of the Act being to secure the surrender of persons who had fled from a country where they had committed a crime, it seemed to me doubtful whether this definition was intended to apply to a case where a person in this country has committed a crime in another country, and I thought it might be that the object of this section was to avoid the necessity of proving that the person in this country was actually a fugitive by making it sufficient to prove the commission of the crime without proving the purpose for which he might be here. However, my doubt is not so strong as to cause me to differ from the decision of this Court.

SMITH, J.—I entirely agree with what has fallen from my brother Cave. If there were no definition clause, the question would admit of some argument; but section 26 seems to me to put the matter beyond all doubt. The words are "who is in" this country—not, as the argument in support of the rule would make them be, "who has fled to this country."

Rule discharged.

Solicitors—Solicitor to the Treasury, for the Crown; Darley & Cumberland, agents for Clifton & Carter, Bristol, for applicant.

1884. July 4. THE QUEEN (*on the prosecution of Hooly*) *v.* THE JUSTICES OF STAFFORDSHIRE.

Practice—Writ of Mandamus—Return of Unconditional Compliance—Pleading over—Rules of 1883 (*Order LIII. rule* 9, *and Order LXVIII. rule* 1).

The practice which allowed a plea to a return of unconditional compliance to a writ of mandamus is in no way affected by the provisions contained in Order LIII. rule 9 *of the Rules of the Supreme Court,* 1883.

Motion to set aside a plea to a return to a writ of *mandamus*. The writ in question ordered the defendants to hold within a reasonable time a further adjournment of the adjourned general annual licensing meeting for the county of Stafford, and to cause notice to be given of the time and place for holding such further adjournment, and at such further adjournment to proceed to hear and determine, pursuant to the statutes in that behalf, the matter of an application by Samuel John Hooly for the renewal of a licence or certificate to hold excise licences to sell by retail beer, cider, or wine, to be consumed in and upon the said beerhouse and premises called the "Horse and Jockey Inn," situate in Tunstall.

The defendants, in their return to the writ, stated that within a reasonable time after the service of the writ they did hold a further adjournment of the adjourned general annual licensing meeting, and caused notice to be given of the time and place for holding the same, and at such further adjourned general annual licensing meeting did in due form of law proceed to hear and determine, pursuant to the statutes in that behalf, the matter of an application by the said Samuel John Hooly.

The prosecutor, in reply to the return of the defendants to the writ of *mandamus*, denied that the defendants in due form of law heard and determined the application, and stated that the defendants had, contrary to law, wholly neglected and refused to renew the licence or certificate. The plea then went on to

state the circumstances connected with the hearing and refusal of the application at the annual licensing meeting and the adjournment thereof held in obedience to the writ of *mandamus*, which refusal was, as the prosecutor contended, contrary to law and the statutes in that behalf and the tenor of the writ.

The defendants thereupon moved that the above plea be struck out or set aside, with costs, upon the grounds that it was a nullity, and that no pleading was allowed by law to the return, and that it was irregular in that it complained of the non-performance of acts not commanded by the writ, and which could not lawfully be commanded by the writ.

H. D. Greene, for the defendants.—The return is one of unconditional compliance, and there is no provision which allows a plea to such a return. Order LIII. rule 9 (1) only allows an applicant to plead to a return "other than an unconditional compliance therewith." The statutes 9 Anne, c. 20, 1 Will. 4. c. 21, and 17 & 18 Vict. c. 125, allowed a plea to the return to be made; but these statutes were repealed by 46 & 47 Vict. c. 49, so that the procedure is now regulated by the above Order.

Jelf, Q.C. (*John Rose* with him), for the prosecutor.—If the defendants' contention is correct, the result would be that a return of unconditional compliance would always furnish a complete answer to a writ of *mandamus*. Inasmuch as Order LIII. rule 9 does not expressly provide what is to be done in a case like the present, under Order LXVIII. rule 1 (1), the old practice still prevails which allowed a plea of this kind to be pleaded.

MATHEW, J.—This application must be refused. No reason can be suggested why the rules of 1883 should have been framed so as not to allow a plea to be pleaded to a return of unconditional compliance to a writ of *mandamus*; but it has been argued that because the statutes which allowed a plea in any case have been repealed, and because the rules of 1883 do not provide for the case of a plea to a return of this kind, therefore the practice which existed under those statutes is no longer in operation. Inasmuch, however, as there is no express provision in the rules in a case of this kind, I think that, by reason of Order LXVIII. rule 1, the practice existing at the time the rules came into operation prevails, and under that practice this plea would have been allowed.

DAY, J.—I concur. The practice of pleading to a return to a writ of *mandamus* was a well known and existing practice on the 24th of October, 1883, when the new rules came into operation. It is no doubt true that the statutes under which the practice arose were repealed in 1883; but, in my judgment, the practice itself still prevails by virtue of the saving clause contained in Order LXVIII. rule 1.

Application refused.

Solicitors—Robinson, Preston & Stow, agents for Hollinshead & Moody, Tunstall, for the prosecution; Thomas White & Sons, agents for Hand, Blakiston & Everitt, Stafford, for defendants.

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(1) By Order LIII. rule 9 of the Rules of the Supreme Court, 1883, "When any return is made to a writ of *mandamus* other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action," &c.

By Order LXVIII. rule 1, subject to certain provisions in that Order not material, nothing in these rules, save as expressly provided, is to affect the procedure or practice, of, *inter alia*, "proceedings on the Crown side of the Queen's Bench Division."

[IN THE COURT OF APPEAL.]

1884. Aug. 9, 11. } HAINES v. GUTHRIE.*

Evidence—Infancy—Declaration by deceased Father as to Age of Child—Admissibility of to prove Age.

The defendant to an action for goods sold, work done, and money paid, set up the defence of infancy. In support of this defence an affidavit made by his father, since deceased, in an administration suit, to which the plaintiff in this action was not a party, containing a statement by the father as to the place and date of the defendant's birth was tendered and received in evidence:—Held (*affirming the judgment of the Queen's Bench Division*), *that such a declaration was only receivable in questions of pedigree, and that no such question was raised in this case, so that the case did not fall within that exception to the general rule as to the inadmissibility of hearsay evidence.*

Appeal from the judgment of the Queen's Bench Division making absolute a rule for a new trial.

Action for 731*l.*, the balance of an account for goods sold and delivered to the defendant by the plaintiff, for work done and money paid for the defendant by the plaintiff at his request.

Defence, *inter alia*, that at the time of the alleged sale and delivery, work and payments, the defendant was an infant under the age of twenty-one years, and that none of the said things were necessaries.

Issue.

At the trial it appeared that the defendant had been born in India, and there was little direct evidence of the date of his birth. An affidavit made in an administration suit, to which the plaintiff was not a party, by the father, since deceased, of the defendant was offered and received in evidence in support of the defence of infancy. In this affidavit the father of the defendant had stated that his son was born at a date which, if correct, would have established the defence of infancy, and this being in evidence the jury found for the defendant in respect of the greater part of the claim, and found for the plaintiff for 4*l.* 16*s.*, representing some necessaries or some work done after the date at which, according to the statement in the affidavit, the defendant came of age. A rule for a new trial, on the ground of misreception of evidence, which had been granted by the Queen's Bench Division was afterwards made absolute.

The defendant appealed.

Willis, Q.C., for the defendant.—It is not doubted that such a statement as that contained in this affidavit would be evidence in a pedigree case, and there seems no reason in law why any sharp distinction should be made between evidence which is admissible in such cases and evidence which may be adduced in cases such as the present. In *Herbert* v. *Tuckal* (1) the question was raised, whether in an action of ejectment a testator was of full age at the time "of his will made by him, and upon evidence it appears that he was born the 14th of February, 1608, and he made his will when he was of the age of twenty-one years within two days, and to prove his nonage the defendant produced an almanack, in which his father had writ the nativity of the devisor, and it was allowed to be strong evidence." In *Phillips on Evidence* (2) it is stated that "not only may relationship in general be proved by the hearsay of a family, but particular facts may also be proved, such as the ages of persons, dates of death or birth." A doubt as to the admissibility of this evidence is raised by the case of *Kidney* v. *Cockburn* (3), where Tindal, C.J., held that such declarations were not admissible as evidence to prove the ages of the parties referred to in them; but it is clear that the Lord Chancellor did not adopt that view, though, as the case was compromised, there is no decision by him on the point. *The King* v. *Erith* (4) only decides that the hearsay declaration of the father of a bastard was not receivable to prove the place of that child's birth. In

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

(1) T. Raym. 84.
(2) 10th ed. p. 199.
(3) 2 Russ. & M. 167.
(4) 8 East, 539.

Shields v. *Boucher* (5), Vice-Chancellor Knight-Bruce inclined to think that such evidence as this was admissible for such a purpose as this, and considered that a question such as that raised in this case was a genealogical question — *Figg* v. *Wedderburne* (6), *Higham* v. *Ridgway* (7), *The King* v. *Eriswell* (8), *Whittuck* v. *Waters* (9), *Vulliamy* v. *Huskisson* (10), *Goodright* v. *Moss* (11), *Plant* v. *Taylor* (12), *Doe* v. *Rawlings* (13), and *Sturla* v. *Frescia* (14) were cited and discussed.

Lumley Smith, Q.C., and *H. D. Greene*, for the plaintiff, were not called on to argue.

BRETT, M.R.—This action was brought for the price of horses which were bought either at a bargained price or at a reasonable price, and the defendant, in answer to that action, set up that he was an infant at the time when the horses were bought. The question arises as to what the rule of evidence is which must be applied to this case. It was sought to establish the fact that the defendant was under age by putting in a declaration in an affidavit made by the deceased father of the defendant as to the date of the birth of the defendant. That affidavit was made in an administration suit, to which the plaintiff was not a party. If it was admissible in such a suit as this, on such a question as this, it would be strong evidence to shew that the defendant was under age. It is obvious that in this case the question of family is immaterial, that the question whose son the defendant was is immaterial, and so were all such questions as whether he was a legitimate or a natural son, an elder or a younger son, or as to what relation he occupied with regard to the rest of the family. There was therefore no question which could be called a question of family; the only question is what was the date of the birth of the defendant.

Can, then, such evidence as this be received for that purpose in such an issue as this raised between these parties, and can it be received against the plaintiff, and therefore also against all the world?

It is to be observed that this evidence is *prima facie* hearsay evidence, and the general rule of law is that hearsay evidence is not admissible; it is therefore sought to bring this case within some recognised exception to that rule. It is rightly said that the laws of evidence have been established by judicial decisions, and by the authority of the Courts, and it is certain that the application of these rules is not easy. There are many well-known exceptions to the general rule to which I have referred, and we have to consider, not whether the rule is in itself good or bad, but whether the facts of the case bring it within one of the well-known exceptions. There is a recent declaration of the law on this subject, and that is found in the judgment of Lord Blackburn in *Sturla* v. *Frescia* (15), where he said:

"It is not disputed that the general rule of English law is that hearsay evidence is not receivable—one reason probably is the want of the safeguards of cross-examination; however, undoubtedly, the law is that, as a general rule, hearsay evidence is not admissible. But to that a great many exceptions have been introduced. I do not say that if we were but beginning to make the law we should be able to say exactly why so much should be admitted and no more—probably it would be difficult to say that in all cases; but the exceptions have been established, and exist, and we have to see whether this case comes within any one of them.

"Now, the first and one of the most important exceptions is briefly expressed in a *dictum* in *Higham* v. *Ridgway* (7), that documents on the face of them appearing to be against the interest of a deceased person who stated the matter are evidence."

And a little further on he continues:—

"Then comes another large class of cases, where, from the nature of the thing, evidence of reputation from deceased per-

(5) 1 De Gex & S. 40.
(6) 11 Law J. Rep. Q.B. 45.
(7) 10 East, 109.
(8) 3 Term Rep. 707.
(9) 4 Car. & P. 375.
(10) 3 You. & C. 80.
(11) 2 Cowp. 591.
(12) 7 Hurl. & N. 211; 31 Law J. Rep. Exch. 289.
(13) 7 East, 279.
(14) 50 Law J. Rep. Chanc. 86; Law Rep. 5 App. Cas. 623.

(15) 50 Law J. Rep. Chanc. at p. 94; Law Rep. 5 App. Cas. at p. 640.

sons is admissible—where it is a public right, or a *quasi*-public right, evidence of reputation is admissible if you prove that the deceased person was of the class who would know it, and had stated it. Upon that, again, I merely say that the question we are now enquiring into—namely, the history of a private individual—is not a matter in which, in any sense, reputation generally can be received.

"Then there is another class of cases which comes nearer to it. It has been established for a long while that in questions of pedigree—I suppose upon the ground that they were matters relating to a time long past, and that it was really necessary to relax the strict rules of evidence there for the purpose of doing justice—but for whatever reason, the statements of deceased members of the family made *ante litem motam*, before there was anything to throw doubt upon them, are evidence to prove pedigree. And such statements by deceased members of the family may be proved, not only by shewing that they actually made the statements, but by shewing that they acted upon them, or assented to them, or did anything that amounted to shewing that they recognised them. If any member of the family, as a person who presumably would know all about the family, had stated such and such a pedigree, that evidence would be receivable, its weight depending upon other circumstances."

It is clear that Lord Blackburn intended to make an exhaustive enumeration of the exceptions, and the exception which applies to this case is that the evidence is admissible in cases where it is a question of pedigree. Here there is no question as to pedigree, no question as to descent, none as to relationship, none as to the position of any person in any family—all these questions are wholly immaterial: so that in this case no question of pedigree could arise, and therefore this case does not fall within the recognised exception to the general rule of evidence.

There is also the opinion of Mr. Justice Patteson in *Figg* v. *Wedderburne* (6), that in such a case as this no question of pedigree arises; and there is, besides, the strong statement by Chief Baron Pollock during the argument of *Plant* v. *Taylor* (12), where he said: "Declarations of a deceased person are only admissible for the purpose of reputation, not of proving facts." And, again, the Lord Chief Baron said in that case: "In an action for goods sold and delivered, declarations of a deceased parent are not admissible to prove that the defendant is an infant. It is different where the question is one of pedigree." It is therefore, I think, clear that in the issue raised in this case between these parties there is no question of pedigree within the meaning of that word as used by the Judges, and therefore it is not within the recognised exception to the general rule against the admissibility of hearsay evidence. This being so, the appeal must be dismissed.

BOWEN, L.J.—I am of the same opinion. I would emphasize that on this issue in this case, between these parties, the declaration of a deceased person is not admissible. I am of opinion also that no question is raised as to the family of the defendant, or as to his position in that family; the only question raised was as to the age of this particular individual.

FRY, L.J.—I agree. I think that the law as laid down to day, and as recently laid down by Lord Blackburn in *Sturla* v. *Frescia* (15), is the same as that which was laid down a century ago by Lord Kenyon in *The King* v. *Eriswell* (8), where he said: "I admit that declarations of the members of a family, and perhaps of others living in habits of intimacy with them, are received in evidence as to pedigrees; but evidence of what a mere stranger has said has ever been rejected in such cases. That, however, has always been understood to be an excepted case, and to stand on reasons peculiar to itself, which I need not take up time by stating."

The exception is confined to questions of pedigree, and no such question is raised in this case, so that this case does not come within the exception, and the appeal consequently fails.

Appeal dismissed.

Solicitors—Wakeford May & May, for plaintiff; Cookson, Waineright & Pennington, for defendant.

BANKRUPTCY.
1884.
May 29;
June 10.

In re LOWENTHAL; *ex parte* BEESTY.

Bankruptcy — Jurisdiction — Questions arising between Third Parties — Bankruptcy Act, 1883 (46 & 47 *Vict. c.* 52), *s.* 102, *sub-s.* 1.

The Court of Bankruptcy has no jurisdiction to entertain personal claims between third parties, or claims to property as between third parties, the trustee not claiming any interest in the property in dispute, although the decision of such question may also decide which of such third parties shall prove against the bankrupt's estate.

The proviso in section 102, *sub-section* 1, *of the Bankruptcy Act*, 1883, *does not add anything to the jurisdiction given by the preceding words, but only regulates the exercise of the jurisdiction where it exists.*

Halliday *v.* Harris (43 Law J. Rep. C.P. 350; Law Rep. 9 C.P. 668) *explained.*

This was a motion on behalf of James W. Beesty that Glyn, Mills & Co., bankers, be ordered to deliver up to him the warrants of thirty-eight bales of sheepskins, which were deposited with them by the bankrupt as security for an advance of 600*l.*, and which were alleged to be the property of Beesty; or that Glyn, Mills & Co. be ordered to deliver up the warrants upon payment of the amount, if any, due to them upon security of the warrants, and for an account if necessary.

On the 19th of February, 1884, the bankrupt, who was a wool broker, acting under instructions, purchased for James W. Beesty fifty-eight bales of sheepskins. The goods were, however, purchased by the bankrupt in his own name. The value of the goods, together with brokerage and commission, amounted to 1,747*l.* 16*s.* 9*d.*, which sum Beesty paid to the bankrupt by two bills of exchange for 1,000*l.* and 747*l.* 16*s.* 9*d.* respectively, the latter of which was subsequently returned to Beesty upon payment of 500*l.* in cash.

Beesty received twenty bales of the goods, and requested the bankrupt to hold the warrants for the remaining thirty-eight bales for him.

On the 21st of February, 1884, the warrants for the thirty-eight bales were deposited by the bankrupt with Glyn, Mills & Co., as security for an advance of 600*l.*

On the 27th of February, 1884, the bankrupt absconded.

Beesty having applied to Glyn, Mills & Co., for the warrants for the thirty-eight bales of sheepskins, they refused to deliver them up unless with the consent of the official receiver, and on payment of the 600*l.* advanced.

Beddall, in support of the motion.

Linklater, *contra*, objected that the Court had no jurisdiction.

W. W. Aldridge, solicitor for the official receiver.

The arguments sufficiently appear from the judgment.

Cur. adv. vult.

CAVE, J. (on June 10), delivered judgment as follows:—In this case Mr. Beddall moved on the part of Mr. Beesty for an order on Messrs. Glyn & Co. to deliver up to him the warrants for some sheepskins which had been deposited with them by the bankrupt by way of pledge to secure advances. The bankrupt purchased certain skins, including those in question, for Mr. Beesty, for the sum of about 1,750*l.*, of which Mr. Beesty has paid 1,500*l.* The bankrupt had warehoused some of the skins in his own name, and subsequently pledged the warrants with Messrs. Glyn & Co., who claim to be entitled to hold them under the Factors Acts until their advances have been repaid. Mr. Linklater, who appeared for them, took a preliminary objection that this Court had no jurisdiction to make the order; and as the case is one of general importance, I took time to consider my decision.

The Court of Bankruptcy has exclusive jurisdiction over personal claims against the bankrupt which are provable in bankruptcy, and also over the assets of the bankrupt which come into the hands of the trustee to be administered; and the debtor and the creditor, as the parties to the administration in bankruptcy, and the trustee, as the person entrusted with that administration, are subject to that jurisdiction.

In re Lowenthal; ex parte Beesty, Bankr.

The Court of Bankruptcy, by section 72 of the Act of 1869, was invested with jurisdiction over third parties for the purpose of deciding all questions of priorities, and all other questions whatsoever which might arise in any case of bankruptcy coming within the cognisance of the Court, or which the Court might deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. The jurisdiction so given was, it should be noticed, concurrent, and not exclusive, and moreover was discretionary and not to be invoked as of right. The cases which were decided upon this section established, first, that where by the operation of the law of bankruptcy the trustee had a higher and better title than the bankrupt—where, for instance, a transaction was impeached as a fraudulent preference or an act of bankruptcy, the Court of Bankruptcy had under this section, and ought to exercise, jurisdiction—*In re Yates; ex parte Brown* (1)—unless (in the case of a County Court) a large amount was at stake—*Ex parte Armitage; in re Learoyd & Co.* (2), *Ex parte Price; in re Roberts* (3). Secondly, that where the trustee claimed only the same right as the bankrupt himself would have had, the Court of Bankruptcy, if it had jurisdiction under section 72, ought not to exercise it—*In re Pollard; ex parte Dickin* (4), *In re Yates; ex parte Brown* (1); and thirdly, that the Court of Bankruptcy had no jurisdiction to entertain personal claims between third parties or claims to property as between third parties, although the decision of such question might also decide which of such third parties should prove against the bankrupt's estate. It is with the third proposition alone that I am now concerned, and I will shortly refer to the authorities by which it is supported. In *Ex parte Lyon; in re Lyon* (5) the Court of Appeal held that the Court of Bankruptcy had no jurisdiction to set aside, on the ground that it had been obtained by pressure, a bill of sale given by a debtor, who had effected a composition, to secure the bill of costs of a receiver appointed under the petition for liquidation. In that case Lord Justice James observed, "The world has already been startled at the extent of the jurisdiction assumed by the Court of Bankruptcy under section 72, and it behoves us to be careful before we enlarge it, and before we allow any branch of the Court of Bankruptcy to set aside solemn deeds on equitable grounds merely because they had their inception in or were somehow connected with bankruptcy proceedings. The case does not come within section 72, the object of which is to provide a summary remedy in matters relating to the distribution of the estate or otherwise arising in or really connected with bankruptcy proceedings. I should be sorry to limit the jurisdiction of the Court as to anything which can be said to be a matter incident to the bankruptcy proceedings. But it does not follow, because there has been a relation between two parties founded on bankruptcy proceedings, that every dealing between them having any connection with that relation is drawn within the jurisdiction of the Court of Bankruptcy." In *Ex parte Maule; in re Motion* (6), Lord Chancellor Selborne says, section 72 "gives the Court a very large authority to 'decide such questions' as it may be found necessary or convenient to determine for the proper purposes of the administration in bankruptcy. But it does not, as we understand it, at all enable the Court of Bankruptcy to draw compulsorily within the sphere of its jurisdiction property or the owners of property not vested in the assignee and not originally subject to the administration in bankruptcy." The same language is held by Lord Justice James in *In re England; ex parte Pennell* (7). In *In re Collie; ex parte Smith* (8) Hopwood & Son alleged that Collie, who sub-

(1) 48 Law J. Rep. Bankr. 78; Law Rep. 11 Ch. D. 148.

(2) Law Rep. 17 Ch. D. 13.

(3) 52 Law J. Rep. Chanc. 131; Law Rep. 21 Ch. D. 553.

(4) 48 Law J. Rep. Bankr. 36; Law Rep. 8 Ch. D. 377.

(5) 41 Law J. Rep. Bankr. 41; Law Rep. 7 Chanc. 494.

(6) 43 Law J. Rep. Bankr. 59; Law Rep. 9 Chanc. 192.

(7) 47 Law J. Rep. Bankr. 21; Law Rep. 6 Ch. D 335.

(8) 45 Law J. Rep. Bankr. 116; Law Rep. 2 Ch. D. 51.

sequently became bankrupt, had bought goods of them by the authority of Smith, Wood & Co., and sued Smith, Wood & Co. for the price, who brought in the trustee of Collie as a third party, and Lords Justices James and Mellish held that the Court of Bankruptcy had no jurisdiction to try the question between Hopwood & Son, and Smith, Wood & Co. *Halliday* v. *Harris* (9) was cited by Mr. Beddall; but that case only establishes, what cannot, I think, be denied, that section 72 gives the Court of Bankruptcy jurisdiction to determine, as matter of fact, the expediency or necessity for entertaining and deciding any question which affects the realisation and distribution of the property of the bankrupt, and that an erroneous determination as to the existence of such expediency or necessity is matter of appeal and not of prohibition. Since these cases were decided, the Act of 1869 has been repealed and the Act of 1883 substituted for it, and section 102 of the later Act contains the same provision as that in section 72 of the Act of 1869, with the following addition:—"Provided that the jurisdiction hereby given shall not be exercised by the County Court for the purpose of adjudicating upon any claim, not arising out of the bankruptcy, which might heretofore have been enforced by action in the High Court, unless all parties to the proceedings consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the Judge exceed in value two hundred pounds." In my judgment this provision cannot add anything to the jurisdiction given by the preceding words, but can at most only regulate the exercise of the jurisdiction where it exists; and the cases which I have cited as establishing the third proposition are therefore unaffected by it. The question in this case does not, in my judgment, arise in the bankruptcy within the meaning of section 102, nor is it necessary to decide it for the purpose of doing complete justice, or making a complete distribution of the property. The trustee does not claim any interest in the property in dispute, and although the decision of the question between Mr. Beesty and Messrs. Glyn & Co. will determine which of them is to prove in the bankruptcy in respect of the value of these skins, just as the decision of the question in *In re Collie; ex parte Smith* (8) determined which party was to prove in the bankruptcy for the value of the goods sold by Hopwood & Son, yet, in my judgment, that is not such a question as is referred to in section 102. It might with as much reason be said that if a creditor made a claim upon a surety for the bankrupt, and the surety alleged that he had been discharged by, for instance, time having been given to the bankrupt, the Court of Bankruptcy had authority to decide that question, because the result would determine whether the creditor or the surety should be the person to prove against the estate of the bankrupt. The motion must be refused, but without prejudice to any action that Mr. Beesty may be advised to bring against Messrs. Glyn & Co., and under the circumstances I think there should be no order as to costs. The official receiver will take his costs out of the estate.

Motion refused, without costs.

(9) 43 Law J. Rep. C.P. 350; Law Rep. 9 C.P. 668.

Solicitors — Stevens, Bawtree & Stevens, for Mr. Beesty; Murray, Hutchins & Stirling, for Glyn, Mills & Co.; W. W. Aldridge, for the official receiver.

1884. July 17. MULCKERN AND ANOTHER *v.* DOERKS.

Practice—Joinder of Causes of Action—Irregularity—Appearance—"Fresh Step" in the Proceedings—Order XVIII. rule 2 *—Order LXX. rule* 2.

Appearance to a writ is a "fresh step" taken within the meaning of Order LXX. rule 2, *and a writ which is irregular to the knowledge of the defendant cannot be set aside on his application after appearance.*

Appeal from chambers in an action in which the writ was specially indorsed with a claim for the possession of two houses and mesne profits, and also for the arrears of subscriptions due under a deed of mort-

gage to a building society of which the plaintiffs are trustees. No leave had been obtained to join the two causes of action under Order XVIII. rule 2 (1).

The defendant appeared, and then an application was made to strike out either the claim for possession or the claim for arrears of subscriptions, on the ground of want of leave. The Master refused this application, and then gave leave to join the two causes of action in one writ; and the Judge at chambers, on appeal, affirmed the Master's order.

Arthur Yates, for the defendant, in support of the appeal.—There is no power to grant the leave after the writ is issued, as the leave is a condition precedent—*Pilcher* v. *Hinds* (2).

[HUDDLESTON, B.—Is not appearance a fresh step within Order LXX. rule 2 (3)?]

It is the practice not to allow a summons to be taken out by any one who has not appeared to the writ, and, being obliged to appear, our appearance cannot prejudice our right to apply to strike this out.

Ashton Cross, for the plaintiffs, cited *Musgrave* v. *Stevens* (4).

Yates, in reply.—In *Musgrave* v. *Stevens* (4) the application was to join a claim for recovery of land with another claim for which a writ had already been issued—and if allowed to do so the plaintiff would have "obtained leave" in accordance with Order XVIII. rule 2 (1). That is the converse of this case.

HUDDLESTON, B.—I think that, whether leave could be given after the issue of the writ or not, this appeal must fail, as it is clear that the appearance is a fresh step taken by the defendant, and therefore, by Order LXX. rule 2 (3), the application to strike out one or other of these claims on the ground of irregularity cannot be allowed.

HAWKINS, J., concurred.

Appeal dismissed, with costs.

Solicitors—Poncione & Leggatt, for plaintiffs; Arthur E. Griffiths, for defendant.

(1) Order XVIII. rule 2: "No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for recovery of land, except claims for mesne profits or arrears of rent, or double value in respect of the premises claimed or any part thereof, and damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed."

(2) Law Rep. 11 Ch. D. 905.

(3) Order LXX. rule 2: "No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if any party applying has taken any fresh step after knowledge of the irregularity."

(4) Weekly Notes, 1881, p. 163.

1884. August 8. } DALLON *v.* GARROLD. *Ex parte* ADAMS.

Solicitor and Client—Lien—Charging Order—Garnishee Order—Priority—Solicitors Act, 1860 (23 & 24 *Vict. c.* 127), *s.* 28.

A plaintiff who had recovered judgment on his claim issued a fi. fa. in execution, and the amount of debt and costs was paid to the sheriff in redemption of the goods seized. On the day after such debt and costs were so paid, a creditor who had obtained a judgment against the plaintiff in the County Court took out a garnishee summons to attach the money in the hands of the sheriff. Two months afterwards the plaintiff's solicitor obtained a charging order on the sum in the sheriff's hands. On the return of the garnishee summons, this charging order was shewn to the County Court Judge, who thereupon refused to make any order on the garnishee summons. The judgment creditor then applied to set aside the charging order by summons in chambers, and SMITH, J., *made an order setting it aside:*—Held, *on appeal, that the solicitor's charging order had priority of the debt to the judgment creditor, and must stand.*

This was an appeal from an order of Smith, J., at chambers, setting aside a charging order in favour of the plaintiff's solicitor on certain money in the hands of the sheriff. The money was paid on the 7th of April, 1884, for debt and costs to the sheriff in possession under a writ of *fi. fa.* in execution of a judgment re-

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covered by the plaintiff against the defendant.

On the 8th of April, 1884, one Davies, a judgment creditor of the plaintiff, took out a garnishee summons in the Hereford County Court, returnable on the 29th of May, and adjourned to the 24th of June, 1884.

On the 11th of June, 1884, Adams, who had acted as the plaintiff's solicitor in this action, obtained a charging order over the money in the hands of the sheriff from a Judge at chambers under 23 & 24 Vict. c. 127. s. 28.

The County Court Judge, on the 24th of June, refused to make any order on the garnishee summons, holding that the solicitor's charging order had priority.

On the 12th of July Davies applied to Smith, J., in chambers to set aside this charging order, which the learned Judge did.

Adams appealed.

Hollams, in support of the appeal.—The garnishee summons is the same in effect as a garnishee order *nisi*, and cannot override the solicitor's right—*Faithful* v. *Ewen* (1) and *Shipley* v. *Gray* (2). The garnishee order not being made absolute was imperfect, and could not oust the priority of the lien of the solicitor, who is the meritorious cause of the recovery of the fund—*Birchall* v. *Pugin* (3).

E. Hume Williams, for Davies.—The money was in the hands of the sheriff as trustee for the plaintiff, and the solicitor's lien was thereby extinguished.

POLLOCK, B.—I am of opinion that this appeal must be allowed. The object of the Act is to give the solicitor an additional means of enforcing his rights when he has not the custody of the fund, although as far as his lien is concerned no statute was necessary. This charging order, however, is an extension of that right of lien to enable him to recover the amount which he claims against the fund. The question here is whether this order is to be treated as an ordinary charging order in favour of another, or as a special means of getting his costs out of the fund in whose-soever hands it may be. In exercising his discretion to grant or refuse the order, the learned Judge would consider whether the solicitor had been guilty of *mala fides*, or stood by and allowed some other person to be deceived. But, in the absence of *mala fides*, the rule is clear that all persons dealing with such funds must treat them as subject to a deduction for the costs of the solicitor who recovered them.

I think this order was properly made, and that in this case the solicitor's charge has priority over all claims whatever.

LOPES, J., concurred.

Appeal allowed.

(1) 26 W.R. 270; 47 Law J. Rep. Chanc. 457; Law Rep. 7 Ch. D. 495.

(2) 28 W.R. 877; 49 Law J. Rep. C.P. 524.

(3) 23 W.R. 923; 44 Law J. Rep. C.P. 278; Law Rep. 10 C.P. 397.

Solicitors—Roberts & Barlow, for Adams; Thomas White & Sons, agents for Matthews & Garrold, Hereford, for Davies.

[IN THE COURT OF APPEAL.]

1884. July 29, 31. } WELDON *v.* WINSLOW.*

Practice—Husband and Wife—Married Women's Property Act, 1882, *s.* 1, *sub-s.* 2—*Tort committed before passing of Act—Right of Wife to sue alone.*

A married woman is entitled under the Married Women's Property Act, 1882, *s.* 1, *sub-s.* 2, *to bring an action in respect of a tort committed upon her during coverture before the commencement of the Act, without joining her husband as plaintiff.*

Appeal by the defendant from the decision of a Divisional Court.

The action was brought by the plaintiff, a married woman, in her own name, to recover damages for libel, trespass, and assault. At the trial the plaintiff was nonsuited, but the Divisional Court (Denman, J., and Manisty, J.) set aside the nonsuit, and granted a new trial. The defendant now appealed, and at the hearing an objection *inter alia* was taken

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

1884.
May 26, 27.
June 24.

JENKS AND OTHERS *v.* TURPIN.

Gaming — Common Gaming House — 17 & 18 Vict. c. 38. s. 4 — Unlawful Gaming.

Upon an information for the offence of unlawful gaming laid under section 4 of 17 & 18 Vict. c. 38, Jenks, the proprietor of the Park Club and occupier of the club premises, was convicted of the offence as "a person who kept and used the house for the purpose of unlawful gaming"; four of the committee were convicted of the offence as "persons who had the management of and assisted in conducting the business of the house"; and three members of the club were convicted of the offence as persons who by playing "assisted in conducting the business of the house."

The game of baccarat was played nightly at the club. About twelve persons played at a time at a special table provided for the purpose. One of the players kept the bank and played against all the others who sat round the table. Three packs of cards were used for the deal, two cards were dealt to each player, the banker included. The object of the game was to get nine in pips, or as near thereto as possible. After the cards had been dealt, the players before looking at their cards made stakes within the bank limit. The banker then looked at his cards, and declared whether he would give the players the option of drawing a fresh card, and each of the players in turn then elected to draw or stand. If the banker had nine and none of the others had, he swept the board. If he had not nine, but a less number, he won from all who were further from nine, and paid to all who were nearer to nine than he was. Play commenced every afternoon at 4.30, and, with the exception of three hours' intermission, was continued until 3, and at times until 8, the next morning. The banks ranged from 25l. to 1,000l., and there was a fresh bank about every twenty minutes.

Upon each of these banks Jenks received one per cent. He also received 5s. from each player up to 2 a.m. After that hour he received 5s. per hour from each player up to 5 a.m., and after that 1l. per hour from each player. He also cashed cheques for the players, charging one per cent. for so doing. The committee had the control of the internal management of the club. The members were elected by the committee, and paid an entrance fee of ten guineas and an annual subscription of six guineas. None but members were admitted to the card room:—

Held, *that the offence of "unlawful gaming" consists in gaming—that is, playing at a game of chance for money—at a common gaming-house. That the Park Club was a common gaming-house, and that the playing therein of baccarat was "unlawful gaming" within section 4 of 17 & 18 Vict. c. 38.*

Held *also, that Jenks and the four members of the committee were properly convicted, but that the players were wrongly convicted of the charge preferred against them under the statute.*

Case stated under 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49.

The appellants were summoned before Sir James Ingham, chief magistrate of the police courts of the Metropolis, sitting at Bow Street Police Court, on the 7th of February, 1884, for having on the 1st of December, 1883, at 7 Park Place, St. James's Street, in the Metropolitan Police District, each committed offences against section 4 of 17 & 18 Vict. c. 38 (1).

(1) 17 & 18 Vict. c. 38. s. 4, is as follows:— "Any person, being the owner or occupier or having the use of any house, room, or place, who shall open, keep, or use the same for the purpose of unlawful gaming being carried on therein, and any person who being the owner or occupier of any house or room shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room, or place opened, kept, or used for the purpose aforesaid, and any person who shall advance or furnish money for the purpose of gaming with persons frequenting such house, room, or place, may on summary conviction thereof before any two Justices of the Peace [or before a magistrate sitting in one of the Metropolitan police courts] be adjudged by such Justices to forfeit and pay such penalty not exceeding 500l. as to such Justices shall seem fit, and may be further adjudged by such Justices to pay such costs attending such conviction as to them shall seem reasonable; and on the non-payment of such penalty and costs, or in the first instance if to

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The appellants had each a right to claim to be tried by a jury, according to section 17 of 42 & 43 Vict. c. 49, and the magistrate informed them of their right, and asked whether they desired to be tried by a jury. Their counsel and solicitor waived that right and stated that they would submit to the magistrate's summary jurisdiction. It was further agreed that the cases of all the appellants should be heard and determined on the same evidence, each being allowed to make their defence either personally or by counsel or by solicitor. There were similar summonses against all the defendants for committing the same offence on the 28th and 29th of November, 1883, and although the evidence of those offences was identical with that of the offence on the 1st of December on which the magistrate adjudicated, only one penalty for one offence was adjudged on conviction.

It was proved that Jenks was the proprietor of the Park Club, and occupier of the house 7 Park Place, St. James's Street. It was proved that John C. Wilkinson, Sir Charles Cunningham, Lewis David Franklin, and Francis Phillips, were members of the committee of management of the said club, and that Arthur Fitch, Sussex Nesbit, and Frederick Charles Hayes were players of baccarat in the said house on the said 1st of December, 1883. The powers of the committee were set out in the rules of the club, a copy of which was annexed, and letters of the secretary shewed that the committee had given orders that between certain days baccarat should not be played by any members of the card room, that subsequently the committee had resolved to allow the said game of baccarat to be resumed by members in the card room, and that finally on the 18th of January, 1884, at a full meeting of the committee, a resolution was unanimously passed suspending the game of baccarat until after the 31st of January following.

The general facts are contained in the notes of evidence, which, so far as are material, were as follows:—

Inspector Donald Swanson, Criminal Investigation Department: "On the 19th of December I went to the Park Club, 7 Park Place, St. James's Street, accompanied by Inspector Turpin. I saw the proprietor, Mr. Jenks, and Mr. Dalton, the secretary. I asked Mr. Jenks to tell me the particulars respecting the club that I would ask him. I wrote down in his presence what he said, and subsequently read it over to him. The statement is as follows:—'Morris Jenks says: The Park Club was opened by me on or about June or July, 1882. At the game of baccarat a regulation bank is the one taken by one of the members in his turn who chooses to take it. It must not be less than 50*l.* Every third bank before 2 A.M. is a regulation bank. The other banks are offered at auction. Each banker pays one per cent., and the punters 5*s.* each, which is called "card money," up to 2 A.M. After that hour 5*s.* an hour is charged, up till 5 A.M., when, to make playing prohibitory, 1*l.* an hour is charged. The club is a proprietary one, of which I am the proprietor. The profits, if any, go to me. The profits arise from subscriptions and card money; the kitchen has been a loss, and wine and cigars sold at almost cost price.' On the 21st of December I saw him again. He then said, 'Members' own cheques are cashed by my authority, and one per cent. is charged as an insurance against bad cheques. I should not cash any member's cheques beyond a reasonable amount. I should cash cheques to the amount of 200*l.*, which I consider a reasonable amount.—I understood the game was played according to the rules, and that each member could take the bank by putting his name down on the slate."

Inspector Turpin corroborated.

Frederick Hatton, night steward of the Park Club: "Mr. Jenks is the only proprietor I know. There is a card room at the club. Baccarat is played there nightly; it requires a special table, with arrangements for the banker and punters. My duties are in the card room. About twelve gentlemen play nightly, beginning at 4.30 P.M., and ceasing at 7.30 P.M., commencing again from 10.30 to 11 P.M., and continuing till 3 o'clock A.M. and up to 8 o'clock in the morning. There would

the said Justices it shall seem fit, may be committed to the common gaol or House of Correction with or without hard labour for any time not exceeding twelve calendar months."

be a fresh bank every twenty minutes. If the bank lost, the word 'banco' would close the bank, which means that the punter declares to play for the amount of money in the bank. I cash the cheques for Mr. Jenks, amounting to 200*l*., to a member. I would cash more than one cheque a night for a member. The bank would not unusually amount to 300*l*. I hand over all moneys to the proprietor, and I receive the money to cash cheques from Mr. Jenks. When the banker has lost his money the bank is ended, but he can renew it three times, paying nothing for renewals. The banker has to put down ready money to the amount of 300*l*. The game is played sometimes with three packs of whist cards, so there would be 156 cards. There would be about sixteen deals before the cards would be exhausted, which takes about twenty minutes."

Stephen Coleman (one of the defendants): "I have been in the habit of playing baccarat at the club, and have seen banks from 25*l*. to 300*l*. I was present on the three nights specified in the summons, and the game of baccarat was played on those nights upon the average I have named. The game has been higher. An open bank is 1,000*l*. and upwards. I have known it reached very seldom—possibly once a week. I never saw it over 1,000*l*. The object of the game is to get nine. Ten is baccarat. The skill is in knowing when to draw and when not to draw. All the fairly exercised skill in the world would not enable you to draw the nine of cards, if you had no luck. The nine beats every card below it. Baccarat is a fair game between the players. The chances are equal, and no advantage is to be had except from skill and luck. If I had funds I would prefer to bank, as with luck I could win much quicker. The banker has a slight extra chance because he can draw."

The magistrate found that all the defendants had been guilty of unlawful gaming.

He adjudged the appellant Jenks to have been guilty of the offence on the 1st of December, 1883 (as occupier, or having the use of the said house), in keeping and using the said house for the purpose of unlawful gaming, and fined him 500*l*.

He adjudged the appellants Wilkinson, Cunningham, Franklin, and Philips to have been guilty of the offence, as persons who, being committee men, had the management of and were assisting in conducting the business of the house so kept and used for the purpose of unlawful gaming, and fined each of them 500*l*. respectively.

He adjudged the appellants Fitch, Nesbit, and Hayes to have been guilty of the offence, as persons who assisted, by playing, in conducting the business of the house so kept and used for the purpose of unlawful gaming, and fined each of them 100*l*. respectively.

The points of law submitted for the opinion of the Court were: (1) Was the gaming according to the facts proved unlawful; (2) Were the appellants, other than Jenks the proprietor and occupier, persons who in law upon the facts proved come within the descriptions mentioned in the Act, neither having the management or assisting in conducting the business of the gaming-house.

May 26, 27.—*Charles Russell, Q.C.* (*Poland* with him), for the appellants.

Besley (*E. Clarke, Q.C.*, with him), for the respondents.—The arguments and authorities referred to are fully set out in the judgments.

HAWKINS, J. (on June 24).—Upon the facts stated in the case, there can be no doubt that Mr. Jenks was to all intents the occupier and keeper of the house in question, whatever were the purposes for which it was open and kept. This indeed was not disputed upon the argument before us, or before the learned magistrate before whom the case was heard. The real and only substantial question is whether it was opened and kept for the purpose of unlawful gaming being carried on therein.

On the part of the appellants it was argued that the primary object in opening and keeping the house was that it might be used as an ordinary social club, and that although there was nightly play in the house, at which considerable sums of money were won and lost, yet such play was merely incidental and ancillary to that primary object. On the other hand, the respondents contended that the primary object was that the house should be used

for the purpose of gaming, just as much as the old gaming-houses were used which it was the object of the statute to suppress, and that the social arrangements were merely subsidiary to its use for such gaming purposes, indeed were necessary for the accommodation and comfort of the members of the club, and to conceal its true character. The learned magistrate took this latter view. I very much doubt whether, even if we differed from him, we should be justified in reversing his decision, the question being one purely of fact. I do not, however, differ; on the contrary, I think that the evidence in support of his conclusion is overwhelming. What are the admitted facts? We must assume Mr. Jenks to be a person of ordinary intelligence and business capacity, and, having no special regard or affection for the members of his club (who, moreover, were to be elected by the committee, and not by himself), to be at least desirous of making some profit out of the house, for the rent and all the expenses for which he was personally liable. Now, the wine and cigars being sold at only little above cost price, and the kitchen carried on at a loss, it may be taken that there was really no profit on these items; and I very much question whether the rent, repairs, insurances, rates, taxes, gas, water, candles, firing, salaries of day and night stewards, wages of servants, their maintenance and clothing, depreciation of furniture, &c., and interest on capital invested, could possibly be covered by the annual subscriptions and entrance fees of the members—the number of whom was probably in a great measure induced by the fact that play would be the order of things for sixteen hours out of the day.

The printed rules are no doubt most admirable, and from reading them nobody would suppose there was even a *soupçon* of a gambling character about the establishment. Rule 21 says that "Hazard shall not be played in the club, nor shall dice be used in the club-house"; rule 22, "The points at whist shall not exceed 1*l.*"; and rule 23, "All games shall be played for ready money only." One could almost imagine that these three rules were framed expressly in order that they might be set up, if necessity arose, to vindicate the character of the club as one of a non-gambling character, where a gentleman might dine and enjoy his rubber of whist if he pleased, but would not be permitted under any circumstances to gamble.

In the letter, I do not find that these rules were broken, but nothing could be less indicative than these rules of the nightly routine of the establishment. From half-past four in the afternoon till eight o'clock on the following morning those who liked could play. There was a night steward (Mr. Hatton), whose duties were in the card room. Baccarat was the game throughout the night, and at it thousands were nightly won and lost. Mr. Russell gave us a vivid description of this game, and the privileges and respective positions and chances of the bankers and players at it. And from the evidence we learn that no bank can be less than 50*l.*; that the ordinary regulation banks ranged from 50*l.* to 300*l.*; that an "open" bank sometimes reached 1,000*l.*; that ordinarily there is a fresh bank every twenty minutes; that a special table and arrangements are provided for the bankers and players; that for each bank three packs of cards are used; that for this accommodation Mr. Jenks received for each bank one per cent. and each punter 5*s.*, as card money, up to 2 A.M.; after which 5*s.* an hour was charged up to 5 A.M., when, to make playing prohibitory, 1*l.* an hour was charged; and that members' cheques were cashed by Mr. Jenks, at a charge of one per cent.—for what purposes these cheques were cashed we can draw our own conclusions.

When all these facts are looked at, even with a most indulgent eye, is it possible for any man in his senses to doubt that the house was really kept and opened for the purpose of gaming, at the game of baccarat, as its main and principal object, and not as a mere social club, in which gambling even to a considerable extent was an ancillary? I think it right, however, to add, that if the house had been kept open for a double purpose—namely, as an honest social club for those who did not desire to play, as well as for the purpose of gaming for those who did—it would none the less be "a house opened and kept for the purpose of gaming."

The enactment, however, under which

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this conviction took place (17 & 18 Vict. c. 38. s. 4) is not directed against every person who keeps a house in which gaming takes place; it imposes a penalty only on those who open, keep, or use a house for the purpose of "unlawful" gaming being carried on therein, or who assist in the management of the business of such house.

This brings me to the first question submitted for our opinion — namely, whether the gaming for the carrying on which this house was opened was "unlawful" gaming. In dealing with this question I think the learned magistrate has taken rather too narrow a view of section 4, in treating the question whether the gaming was unlawful as dependent upon whether the games played were unlawful games. The section makes no mention of unlawful games, nor does it in any way confine its operation to persons keeping houses for gaming at such games —it is directed generally against all persons keeping houses for the purpose of unlawful gaming. The illegality of the gaming is what we have to look to, and not merely the illegality of the game. Gaming may be unlawful by reason of the place in which it takes place, or unlawfulness of the game itself. The common law did not prohibit the playing at dice and cards—11 *Co. Rep.* 87; *Sherbon* v. *Colebach* (2); they were not unlawful games. But the keeping of a common gaming-house was at common law an indictable offence —*Hawk. P.C.* (3), *Bac. Abr.* "Nuisance" A. (4). Can anybody doubt that at common law, if dice and cards were played in a common gaming-house as part of the unlawful business thereof, such gaming would be unlawful, though the games in themselves were not so? To me, therefore, it seems that, in order to determine whether the gaming was unlawful, two matters present themselves for consideration: First, was this house a common gaming-house in which all gaming was unlawful? Secondly, was it opened for the purpose of an unlawful game being played therein so as to make that particular gaming unlawful? In considering this latter question we have confined our attention to the game of baccarat, no other game played therein having been suggested to be an unlawful game.

First, was this house kept as a common gaming-house so as to make it an indictable nuisance at common law? In *Hawkins's Pleas of the Crown* (5) it is said that "all common gaming-houses are nuisances in the eye of the law, not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood"; and in the following section 7 he says: "A common play-house may be a nuisance if it draw together such numbers of coaches or people as prove generally inconvenient to the places adjacent"; but he goes on to draw a distinction between nuisances so occasioned and such nuisances as bawdy-houses and common gaming-houses, stating that "play-houses are not nuisances in their own nature, but may only become such by accident, whereas the others cannot but be nuisances." Speaking of gaming, Blackstone (in vol. 4, p. 171) says: "Next to that of 'luxury' (6) naturally follows the offence of gaming, which is generally introduced to supply or retrieve the expenses occasioned by the former, it being a kind of tacit confession that the company engaged therein do in general exceed the bounds of their respective fortunes; and therefore they cast lots to determine upon whom the ruin shall at present fall, that the rest may be saved a little longer. But, taken in any light, it is an offence of the most alarming nature, tending by necessary consequence to promote public idleness, theft, and debauchery among those of a lower class; and, among persons of a superior rank, it hath frequently been attended with the sudden ruin and desolation of ancient and opulent families, an abandoned prostitution of every principle of honour and virtue, and too often hath ended in self-murder." Later on in the same section he says: "It is the gaming in high life that demands the attention of the magistrates; a passion to which every

(2) 2 Vent. 175.
(3) Book 1, c. 75, ss. 1, 6.
(4) Vol. 5, p. 178.
(5) Book 1, c. 75, s. 6.
(6) Against which sumptuary laws then existed: see 4 Black. Com. 170, s. 7.

valuable consideration is made a sacrifice." In *Russell on Crimes* (7) the principle alleged upon which common gaming-houses are punishable as nuisances is that they are "detrimental to the public, as they promote cheating and other corrupt practices, and incite to idleness and avaricious ways of gaining property great numbers whose time might be otherwise employed for the good of the community." In *The King* v. *Rogier and Another* (8), which was an indictment for keeping a common gaming-house, Mr. Justice Best said: "Any practice which has a tendency to injure the public morals is a common law offence"; and both he and Chief Justice Abbott treated playing at even innocent games for excessive amounts as illegal. As to excessive gaming, however, I shall have a word or two to say hereafter.

After a careful consideration of the facts and of all that has been so ably addressed to us upon the subject, I have come to the conclusion that there was an abundance of evidence that, in all its essential characteristics, the Park Club House was a "common gaming-house," and that, as such, the keeper of it might have been indicted as for a nuisance at common law. Its pernicious tendency cannot be doubted, and to it almost all the *dicta* of the various writers I have referred to might be truly applied; and the learned magistrate expressly finds that the game played at this house is one which promotes "idleness and avaricious ways of getting money, and that it unfits persons for the performance of their duties in life." It is true that no annoying interference in the public streets can be pointed to, so that in that sense a public nuisance cannot be said to have been created; but that is not necessary—see *The Queen* v. *Rice and Another* (9).

In my judgment the keeping a common gaming-house is in itself a nuisance, and the keeper of it is, as such, guilty of an indictable offence; neither, although doubts seem to have arisen, do I think it makes any difference that the use of the house and the gaming therein was limited to the subscribers and members of the club, and that it was not open to all persons desirous of using the same. If this could be set up as a defence to an indictment any indictment for keeping a common gaming-house might be defeated. To no gaming-house is the public at large invited to go without restriction of some sort or other. The keeper of such a house has always the right to permit or refuse admission to any one he pleases, or to make such rules as he may think fit for the regulation of such admission. Here he placed himself in the hands of the committee to elect whom they would, provided only the number of members did not exceed 500. If the admission of 500 persons to a gaming-house does not make it a common gaming-house, it might equally be said that the admission of 5,000 would not. The law does not require that it shall be a public gaming-house: a common gaming-house is that which is forbidden—that is, a house in which a large number of persons are invited habitually to congregate for the purpose of gaming.

I now proceed to discuss the question whether this house was kept for the purpose of unlawful gaming in the sense of gaming at unlawful games—a somewhat difficult subject to deal with, because, with very few exceptions, no games have been, in so many words, by name declared to be unlawful; and yet, in using the words "unlawful games," it is clear the Legislature intended them to cover and include some games which, being lawful in themselves, were only made unlawful when played in particular places or by particular persons. This I shall point out when I come to refer, as I must do, to the statutes cited in the course of the argument.

I have already stated that at common law the playing at any game was legal and permissible—11 *Co. Rep.* 87. In *Sherbon* v. *Colebach* (A.D. 1691) (2), which was an action to recover 20*l.* lost by the defendant to the plaintiff at hazard, the Court said: "Neither is play at dice in itself unlawful, though prohibited by several statutes to certain persons and to be used in certain places." *Bacon's Abridgment*, however (tit. "Gaming," A.), states this with some qualification—namely, that such games must be played innocently and by way of recreation. The passage runs

(7) Vol. i. 428.

(8) 1 B. & C. 272; better reported in 2 Dowl. & Ry. 431.

(9) 35 Law J. Rep. M.C. 93; Law Rep. 1 C.C.R. 21.

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thus: "It seems that by the common law the playing at cards, dice, &c., when practised innocently and as a recreation, the better to fit a person for business, is not at all unlawful nor punishable as any offence whatever." I do not find this qualification recognised in any reported case or in any other of the old text-books. If played innocently and for recreation only, it would not be gaming at all—see *The Queen* v. *Ashton* (10). There a publican was convicted "for suffering an unlawful game called dominoes to be played in his house against the tenor of his licence," which makes it a provision that the party licensed "do not knowingly suffer any unlawful games or any gaming whatsoever therein." It was not proved that any stake was played for. The Court quashed the conviction. Lord Campbell, in giving judgment, said it had not been shewn that the game of dominoes was necessarily in itself unlawful; and, as to gaming, he said, "parties may play at a game which is not in itself unlawful without gaming. If money were staked, that would be gaming." I think, therefore, that, in the passage cited from *Bacon's Abridgment*, the writer only intended to state generally that innocent play was perfectly lawful, and not to leave it to be inferred that at common law to play at dice otherwise than for recreation was unlawful.

No case was cited to us, nor have I been able to find any, in which a person was held punishable at common law in respect of gaming except for a nuisance as the keeper of a common gaming-house. We must take it therefore, I think, that at common law no game was in itself unlawful, and must look to the statutes to see what games are rendered unlawful by Legislative enactments.

The first to which reference need be made of these statutes—the 33rd Hen. 8. c. 9—had for its main object, not so much the prevention of gaming as a vice injurious to the morals of the people, as the advancement and maintenance of archery for the defence of the country, the science and practice of which had been neglected by the growing habit of playing at "unlawful games and play." It is entitled "The Bill for the maintaining artillery and the debarring of unlawful games." By the 11th section it is enacted that no person shall for his gain keep any common house, alley, or place of (11) [bowling, coyting, cloysh-cayls, half-bowl, tennis], dicing-table, or carding, or any other game prohibited by any statute theretofore made (see 3 Hen. 8. c. 3, and 6 Hen. 8. c. 2), or any unlawful new game then invented or thereafter to be invented, upon pain of 40*s.* for every day, &c. By the 12th section, every person using and haunting any of the said houses and plays, and there playing, was to forfeit each time 6*s.* 8*d.* The 16th section of the same Act imposed penalties on artificers' servants, &c., playing at unlawful games out of Christmas, &c. The 17th section repealed all previous statutes made for the restraint of unlawful games.

Now, in this statute, it will be observed there is nothing to make any game absolutely unlawful. It is made unlawful to keep for gain any house for playing at such games as are specified in section 11; and it is made penal for any person to play at such games in such houses; and persons of humble rank, such as artificers, are forbidden to play at such games out of Christmas or without licence; but that is all. The games, though called unlawful, are only forbidden to be played in certain places, and by a specified class of persons, only at specified times.

Next comes the statute 16 Car. 2. c. 7 (the whole of which is repealed by 8 & 9 Vict. c. 109, s. 15), entitled "An Act against deceitful, disorderly, and excessive gaming." It was, as its preamble shews, passed for a totally different purpose than that contemplated by 33 Hen. 8. c. 9. It begins by reciting that "all lawful games and exercises should not be otherwise used than as innocent and moderate recreations, and not as constant trades or callings to gain a living or make unlawful advantage thereby." Then it goes on to recite that, "by the immoderate use of them, many mischiefs and inconveniences do arise," and among them the encouragement of idle and disorderly persons and

(10) 1 E. & B. 286; 22 Law J. Rep. M.C. 1.

(11) These games within brackets, and the like, are by 8 & 9 Vict. c. 109. s. 1 declared to be no longer unlawful.

the debauching of many of the younger sort both of the nobility and gentry and others, to the loss of their time, the ruin of their fortunes, and the withdrawing them from laudable employments. The 2nd section of the Act is directed against fraud and deceit in playing at any game. The 3rd section is directed against excessive and immoderate gaming, and enacts that, if any person shall play at any game (other than with and for ready money), and shall lose exceeding 100*l.* at any one time, he shall not be bound to pay, and the person winning shall forfeit treble the value of all he shall win above 100*l.* Again it will be observed in this statute no game is made unlawful in itself. In *Applegarth* v. *Colley* (12) Baron Rolfe said: "The Act (16 Car. 2. c. 7) itself, both in its title and preamble, appears to be directed solely against fraudulent and excessive play, and to be in no respect pointed at moderate play, where there is no fraud."

Next in order comes the 9th Anne, c. 14, entitled "An Act for the better preventing of excessive and deceitful gaming." By section 2, any person who shall at any one sitting lose 10*l.* and shall pay the same, may within three months recover the same back from the winner; and in case the person losing the money does not recover it back, any other person may recover the same and treble the value thereof—one moiety for his own use, the other for the poor of the parish "where the offence shall be committed." The 5th section makes it an indictable offence to win any amount by fraudulent play, or to win of any person at any one time above the value of 10*l.* Section 6 is directed against persons who support themselves by gaming only, and it empowers Justices of the peace to require from every person who appears to them to maintain the principal part of his expenses by gaming to find sureties for his good behaviour for twelve months, and in default to be committed to the common gaol. Again, it will be noted that no game is rendered unlawful; but excessive or fraudulent gaming at any game is made an indictable offence.

The 12th Geo. 2. c. 28, entitled "An Act for the more effectual preventing of excessive and deceitful gaming," in the first section recites various statutes prohibiting lotteries, and then, after reciting that several persons have for many years past carried on and set up certain fraudulent games and lotteries to be determined by the chance of cards and dice, under the denomination of the games of the ace of hearts, pharaoh, basset, and hazard, by section 2 enacts that "the said games of the ace of hearts, pharaoh, basset, and hazard are, and are thereby declared to be, games and lotteries by cards or dice within the meaning of the Acts prohibiting lotteries, and that every person who shall keep the said games shall be subject to all the penalties inflicted upon persons keeping lotteries"; and in section 3 it is enacted that every person who shall play or stake at either of the said games shall be liable to a penalty of 50*l.* In this, as in several other statutes, there is a provision that the Act shall not extend to prevent playing or gaming at any games within any of the royal palaces. This statute expressly declared the games of ace of hearts, pharaoh, basset, and hazard to be lotteries, and on that account to be illegal.

In the following year, 13 Geo. 2, another statute was passed (13 Geo. 2. c. 19), which, after enacting some curious and interesting provisions (since repealed by 3 & 4 Vict. c. 5) relating to horse-racing, and in section 9 reciting that, notwithstanding the good and wholesome law made in the preceding year, some fraudulent and deceitful games had been invented, and that a game called "passage" was then daily practised and carried on, it was therefore enacted that the said game of passage and every other game invented or to be invented with a die or dice (backgammon and the other games then played with the backgammon tables only excepted) shall be deemed games or lotteries by dice, and it inflicts penalties upon all persons keeping tables for playing, or playing at, the said games. Passage and other games of a like nature played with dice are thus added to the list of unlawful games. The 18 Geo. 2. c. 34. s. 1, after reciting the mischief attendant upon excessive gaming, &c., and

(12) 10 Mee. & W. 723; 12 Law J. Rep. Exch. 34.

that a "pernicious" game called roulet or roly-poly was then daily practised, enacted that no person should keep any house for playing roulet or roly-poly, or any other game with cards or dice already prohibited by law, under penalties prescribed. By section 2 it was enacted that if any person should play at roulet, or at any game with cards or dice already prohibited by law, he should incur the penalties therein prescribed. By the 8th section of the same Act it was enacted that any person winning or losing at play at any one time 10*l.* should be liable to be indicted and fined five times the value of the sum so won or lost. (This section was repealed by 8 & 9 Vict. c. 109.) This Act, it will be seen, makes illegal the game of roulet, which is a game of chance. The 25 Geo. 2. c. 36 throws but little light upon the subject. Section 8, however, enacts that any person who shall appear, act, or behave himself as master, or as the person having the care, government, or management of any gaming-house, shall be deemed and taken to be the keeper thereof, and liable to be punished as such notwithstanding he shall not in fact be the real keeper or owner thereof.

In this state the law (so far as relates to the immediate question before us) was when the 8 & 9 Vict. c. 109 (1845) was passed. By that Act, entitled "An Act to amend the law concerning games and wagers," after reciting that "the laws heretofore made in restraint of unlawful gaming have been found of no avail to prevent the mischiefs which may happen therefrom, and also apply to sundry games of skill from which the like mischief cannot arise," by section 1 it is enacted that so much of 33 Hen. 8. c. 9, whereby any game of mere skill, such as bowling, coyting, cloysh-cayls, half-bowl, tennis, or the like, is declared an unlawful game, or which enacts any penalty for playing at such game of skill as aforesaid, shall be repealed; and also so much of the said Act as makes it lawful for every master to license his servants, and for every nobleman, &c., to license his or their servants or family, to play at cards, dice, or tables, or any unlawful game, shall be repealed; and no such licence shall avail any person to exempt him from the danger or penalty of playing at any unlawful game, or in any common gaming-house. Nothing could more clearly indicate the intention of the Legislature to legalise to all persons and at all times mere games of skill, but to preserve in their integrity all the penalties which then attached to the playing at unlawful games anywhere, or gaming at all (even at lawful games) in common gaming-houses, and to deprive every person of the power to license such playing or gaming. The 2nd section defines what in default of other evidence shall be sufficient to prove a house to be a common gaming-house (13). After reciting that doubts had arisen whether certain houses, alleged or reputed to be opened for the use of the subscribers only, or not open to all persons desirous of using the same, are to be deemed common gaming-houses, it is declared and enacted that "in default of other evidence proving any house or place to be a common gaming-house, it shall be sufficient, in support of the allegation in any indictment or information that any house or place is a common gaming-house, to prove that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; and every such house or place shall be deemed a common gaming-house such as is contrary to law and forbidden to be kept by 33 Hen. 8. c. 9." By section 4 it is enacted that "the owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier, and other person who shall act in any manner in conducting the business of any common gaming-house," shall, on conviction, besides any penalty or punishment to which he may be liable under 33 Hen. 8. c. 9, be liable to forfeit

(13) The fact that a house is a common gaming-house may still be established by any evidence which might prove it to be so at common law. This 2nd section only defines what will suffice in default of other evidence.

a penalty not exceeding 100*l.* The power to indict for keeping a common gaming-house is not taken away, but a summary conviction would be a bar to a subsequent indictment. By this statute (8 & 9 Vict. c. 109. s. 15) the statutes 16 Car. 2. c. 7, 9 Anne, c. 14 (so far as it is above referred to), and 18 Geo. 2. c. 34 (so far as above mentioned), were repealed. The statute 16 & 17 Vict. c. 119 was directed to the suppression of betting-houses, and has no application to the present case. Then came the statute 17 & 18 Vict. c. 38 (1854), under which the conviction now in question was made. It is entitled "An Act for the suppression of gaming-houses." It recites the 8 & 9 Vict. c. 109, and by section 4 enacts that "any person being the owner or occupier, or having the use of any house, room, or place, who shall open, keep, or use the same for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or occupier of any house or room, shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room, or place, opened, kept, or used for the purpose aforesaid, and any person who shall advance or furnish money for the purpose of gaming with persons frequenting such house, room, or place," may on summary conviction be adjudged to pay a penalty not exceeding 500*l.* with costs, &c.

I have cited at some length these various statutes, even where the provisions have been repealed, for the purpose of shewing the general current of legislation against gaming-houses, and making more intelligible what I am about to say upon the question as to what are "unlawful games" within the meaning of the statutes. I divide them into two classes—first, those which are absolutely forbidden by name, and to the gaming at which a penalty is attached. This class includes ace of hearts, pharaoh (or faro), basset, and hazard—made illegal by 12 Geo. 2. c. 28; passage, and every other game with a die or dice except backgammon—made illegal by 13 Geo. 2. c. 19; and roulet (or roly-poly)—made illegal by 18 Geo. 2. c. 34. The second class comprises a number of games not altogether prohibited under penal consequences, nor declared to be altogether illegal, but which nevertheless have been styled "unlawful" by the Legislature, because the keeping of houses for playing them and the playing them therein by anybody were rendered illegal.

Now, the games thus treated as unlawful by 33 Hen. 8. c. 9, are bowling, coyting, cloysh-cayls, half-bowl, tennis, dicing-table, or carding, or any other manner of game prohibited by any statute theretofore made, or any unlawful new game then invented or made, or any other new unlawful game thereafter to be invented, found, had, or made. As to bowling, coyting, cloysh-cayls, half-bowl, and tennis, these seem to have been games of mere skill; and, although they remained unlawful games until the year 1845, the statute 33 Hen. 8. c. 9 was repealed as to them and all other like games of skill by 8 & 9 Vict. c. 109. s. 1. Since that statute, therefore, the only games made unlawful by 33 Hen. 8. c. 9 are games of dice or cards, whether such games were known at the time of the passing of that statute or have been since invented. All such games, if they are games of chance, or games of chance and skill combined (which cannot be called games of mere skill), are, in my opinion, clearly within the meaning of the words "unlawful games" in the 17 & 18 Vict. c. 38. The language of the 1st section of 8 & 9 Vict. c. 109, in referring to the 33 Hen. 8. c. 9, and repealing only so much of it as applied to games of skill, is a strong indication of the intention of the Legislature that all the other games mentioned in the statute of Hen. 8. were to continue to be treated as unlawful in the sense in and to the extent to which they were made unlawful by that statute, namely, unlawful if played in a house kept for playing at them.

The unlawful games, then, now are—ace of hearts, pharaoh, basset, hazard, passage, roulet, every game of dice except backgammon, and every game of cards which is not a game of mere skill; and, I incline to add, any other mere game of chance. Does baccarat come within this category? The description of the game given by Mr. Russell satisfies me that it does. It is a

game of cards. It is a game of chance; and though, as in most other things, experience and judgment may make one player or banker more successful than another, it would be a perversion of words to say it was in any sense a game of mere skill. It is, therefore, in my opinion, an unlawful game within the meaning of the statute. It is said that it is a game of modern invention. That may be; and, assuming it to be so, it is just what the Legislature intended to include in the phraseology of the 11th section of 33 Hen. 8. c. 9, as a "new unlawful game thereafter to be invented." If I am right in this view, then, apart from any question whether the other evidence establishes this to be a common gaming-house, there is clearly sufficient to establish it as such under section 11 of 8 & 9 Vict. c. 109. I think it expedient to say that, since the repeal of the statute of Anne (9 Anne, c. 14) and 18 Geo. 2. c. 34, I do not think excessive gaming upon any game would in itself render the game unlawful: for excessive gaming *per se* is not any longer a legal offence. It was not one at common law, and there now exists no statute against it. The *dictum* of Lord Tenterden in *The King* v. *Rogier* (8), that "the playing for large and excessive sums of money would of itself make any game unlawful," must be now read having regard to the fact that when that *dictum* was uttered the statute of Anne against excessive gaming was in full force. Nevertheless, though excessive gaming is no longer *per se* unlawful, the fact that it is habitually carried on in a house kept for the purpose of gaming is a cogent piece of evidence to be offered to a jury or other tribunal called on to determine whether that house is a common gaming-house, so as to make the keeper of it liable to be indicted for a nuisance at common law.

Being satisfied that Mr. Jenks was the occupier of the house, that he opened and kept it for the purpose of gaming at, among other games, baccarat, and that baccarat is an unlawful game within the meaning of the statute, I am of opinion he was properly convicted, under the 4th section of 17 & 18 Vict. c. 38, of opening and keeping a house for the purpose of unlawful gaming; and, having regard to what I have already said as to the house being a common gaming-house, I am of opinion that the conviction may also be supported upon the ground that all gaming therein, even at lawful games, was unlawful gaming. I have now disposed of the case so far as regards Mr. Jenks.

As regards the four members of the committee of management, Mr. Wilkinson, Sir Charles Cunningham, Mr. Franklin, and Mr. Phillips, having decided that the house was opened and kept for unlawful gaming, the only remaining question is whether these appellants had the care or management of or in any manner assisted in conducting the business thereof. I am of opinion that they did undertake, and had such care and management, and did so assist in conducting the business of the house. It is impossible to doubt that they were cognisant of the rules and regulations of the club, and of its true character. The 2nd rule expressly places the internal arrangements of the club under the management of the committee. The committee elect the members; they have power to make by-laws for its regulation; and, above all, they exercised an authority with reference to this very game of baccarat, to allow it to be played, or to suspend the game pending the proceedings before the magistrate. I think there was abundance of evidence to warrant their conviction.

And now, lastly, as to the players—Messrs. Fitch, Nesbit, and Hayes—I do not find any evidence that they did more than play at baccarat in the house. By so doing it may be that they to some extent enhanced the profits of the house, but it does not shew that they took any part in the care or management of it. A customer who buys an article at a shop might just as well be said to assist in conducting the business of the shop. The law does not make it an offence to add to the profits of a gaming establishment. It requires that there should be assistance in conducting the business. Whenever the Legislature has intended to impose a penalty upon a mere player at an unlawful game, there has been an express enactment to that effect. (See 33 Hen. 8. c. 9. s. 12; 16 Car. 2. c. 7. s. 3; 9 Anne, c. 14. s. 5; 12 Geo. 2. c. 28. s. 3; 13 Geo. 2. c. 19. s. 9; 18 Geo. 2.

c. 34. s. 2, &c.) It is not necessary for us to enquire whether for playing at such a game as baccarat a player is subject to any penalty. It is sufficient for us to say that this conviction for assisting in conducting the business of the house cannot be sustained as against the mere players. In the course of the argument it was asked, what is the magistrate to do with persons taken into custody in a common gaming-house under the authority of 33 Hen. 8. c. 9, or 8 & 9 Vict. c. 109. ss. 3 and 6? It is not necessary now to answer that question, but I would refer to the 14th section of 33 Hen. 8. c. 9, which does not seem to have been repealed (see 8 & 9 Vict. c. 109. ss. 1, 3, and 6), and from which it would seem that the Justices have power to require recognisances from such persons no more to haunt such gaming-houses or to play at such prohibited games. Moreover, the 12th section of 33 Hen. 8. c. 9, also unrepealed, imposes a penalty on persons playing in gaming-houses at unlawful games; and 12 Geo. 2. c. 28. s. 3, also unrepealed, makes persons playing at ace of hearts, &c., liable to a penalty of 50*l.* So also 13 Geo. 2. c. 19. s. 9, makes it penal to keep houses or to play at games of dice.

For the reasons above expressed, I am of opinion that the gaming in respect of which the convictions were made was unlawful; that as regards the defendants Jenks, Wilkinson, Cunningham, Franklin, and Phillips, the convictions ought to be affirmed; but that as regards the defendants Fitch, Nesbit, and Hayes, they ought to be quashed.

I have but a few words more to say. Mr. Russell, at the conclusion of his able argument for the appellants, appealed to us not to make a law to meet a defect in the laws as they now stand. We have no idea of dong so. We do but administer the law as we believe it to be, and to have existed for many a long year, though it has been so often broken and disregarded with impunity, that at last its existence seems to have been forgotten; and, quoting the language of *Blackstone* (14), I say, "Our laws against gaming are not so deficient as ourselves and our magistrates in putting those laws in execution."

(14) Vol. 4, p. 173.

SMITH, J.—This is a case stated by Sir James Ingham for the opinion of the Court. The matter for determination is whether all or any of the defendants have been guilty of the offence created by section 4 of the 17 & 18 Vict. c. 38. That section enacts that "any person, being the owner or occupier or having the use of any house, room, or place, who shall open, keep, or use the same for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or occupier of any house or room, shall knowingly and wilfully permit the same to be opened, kept, or used by any person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room, or place opened, kept, or used for the purpose aforesaid, and any person who shall advance or furnish money for the purpose of gaming with any person frequenting such house, room, or place, may, on summary conviction thereof before any two Justices of the peace, be adjudged by such Justices to forfeit and pay a penalty not exceeding 500*l.*"

The facts are as follows: The appellant Morris Jenks was, on the 1st of December, 1883, proprietor of and occupied the house No. 7 Park Place, St. James's Street. He opened this house for the purposes hereinafter detailed in the month of July, 1882, and kept it so open down to the 1st of December, 1883. The appellants Sir Charles Cunningham, Lewis David Franklin, John C. Wilkinson, and Francis Phillips, were members of the committee of management of what was called the Park Club, which club existed at No. 7 Park Place, St. James's Street. The appellants Arthur Fitch, Sussex Nesbit, and Frederick Charles Hayes were on the 1st of December, 1883, engaged in playing a game called baccarat at the house, and were members of the club, but were not otherwise interested in the house.

When the appellant Jenks opened the house in July, 1882, he formed the club therein which was called the Park Club. By the rules and regulations for the government of the same, it was provided, amongst other things—(*a*) that the club should consist of 500 members, and that

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the internal arrangements of the club should be managed by a committee of not more than twelve members; (*b*) the election of candidates should be by the committee, and one black ball should exclude; (*c*) the entrance-fee should be ten guineas, the annual subscription six guineas; (*d*) under no pretence should strangers be admitted into the card-room; (*e*) hazard should not be played at the club, nor should dice be used in the club-house; (*f*) the points at whist should not exceed 1*l.*; (*g*) all games should be played for ready money only; (*h*) the committee should have power to make such by-laws and regulations as might appear necessary for the good order and better regulation of the club. There were other rules regarding the internal management of the establishment, which, to me, seem immaterial to the present case.

The mode by which the appellant Jenks remunerated himself for opening and keeping the house was as follows:—First, by entrance fees; secondly, by annual subscriptions; thirdly, by card-money and other money obtained from persons playing at cards at his house. The kitchen was carried on at a loss, and the wine and cigars sold were sold at almost cost price. There was no other source of income. I have not any account shewing the expenditure necessary to be made for rent, servants, and other establishment charges.

The following facts were proved:—From 4 in the afternoon until 3 the next morning, and at times until 8 the next morning, with the exception of some three hours between 7.30 and 10.30 p.m., there was played nightly at the house a game called baccarat. About twelve persons played at it at a time. To state it shortly, the game is as follows:—A special table is provided for the game, with arrangements for the banker and others playing. One of the persons playing keeps the bank, and is called the "banker"; the others playing are called "punters." The banker plays against the others, who all sit round the table. Three packs of cards shuffled together are used for the deal. Two cards are dealt to each player, the banker included. The object of the game is to get "nine in pips," or as near thereto as possible. After the cards have been dealt, the players before looking at their cards make stakes within the bank limit. The banker then looks at his cards, and declares whether he will give the players the option of drawing a fresh card; each of the players in turn then elects to draw or stand. In this consists what has been termed at the bar the skill of the game—namely, the determining either by banker or player whether to draw or stand. If the banker has nine, and none of the others have, he sweeps the board; if he has not nine, but a lesser number, he wins from all who are further from nine, and pays to all who are nearer to nine than he is. The banker has a slight extra chance, and with luck can win much quicker than an ordinary player. The banks kept at the house ranged in amounts from a minimum of 25*l.* to a maximum of 1,000*l.* The regulation bank, as it is called, was not less than 50*l.*, and would not unusually amount to 300*l.* Every third bank before 2 A.M. was a regulation bank, and it took about twenty minutes to play for the respective amounts in each successive bank. There was a fresh bank about every twenty minutes. Upon each of these banks Jenks received one per cent. He also received 5*s.* from each player up to 2 A.M., after that hour 5*s.* per hour was paid to him by each player up to 5 A.M.; and after that hour 1*l.* per hour was paid to him by each player. This was the game habitually and continuously played at No. 7 Park Street. Jenks also cashed cheques for the players up to 200*l.* in amount, charging for so doing one per cent.; he would cash more than one cheque a night for a member.

From these facts two things, in my judgment, are patent: the one, that in this house a game of chance was habitually played, at which sums ranging from 25*l.* to 1,000*l.* might be and at times were lost and won every successive twenty minutes whilst play existed; the other, that Jenks by reason of such play became possessed of money which dwarfed into insignificance the amounts received by him for entrance fees and annual subscriptions. I cannot define with accuracy what he actually received for permitting this play to take place in his house; but I must say that I think that the learned magistrate was not beyond the mark when he put it at between 40*l.* and 50*l.* a night. These being

the facts proved, and to which there was no contradiction, what did Jenks keep? A common gaming-house has been defined to be a house kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which, first, a bank is kept by one or more of the players exclusively of the others; or, secondly, in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other persons by whom the game is managed or against whom the other players stake, play, or bet. That constitutes a common gaming-house. Was No. 7 Park Street such? I say unquestionably yes.

It was suggested at the bar that the bank must be kept by the owner or occupier or keeper of the house, and, if kept by one of the players, it was not a bank within the above definition. I know of no such limitation, and I am of opinion that it does not exist. I entirely agree with the learned magistrate when he found that the club in this case was either a pretence or a sham altogether, or was merely assistant to the main business which Jenks carried on—namely, that of gambling. Could anything be a greater farce in an establishment such as this was, where it was possible to lose 1,000*l.* in some twenty minutes, than to have as one of its rules (and it has been suggested that these rules shew that it was nothing but a *bona fide* club with an ordinary card-room): "The points at whist shall not exceed 1*l.*"? When the learned counsel who argued for the appellants sought to liken the Park Club to Brookes's, White's, and other well-known proprietary London clubs, they sought to liken it to subject-matters to which it had no resemblance and with which it had nothing in reality in common, excepting that each had a proprietor and each was called a club. In the one case, a gambling-house pure and simple was kept; in the other, this certainly was and is not the case. Holding as I do, and agreeing as I do with the learned magistrate when he held that the Park Club was nothing but a common gaming-house within the true objection of that term, the question comes, whether within section 4 of 17 & 18 Vict. c. 38, Jenks did keep or use 7 Park Street for the purpose of unlawful gaming being carried on therein.

It was admitted that he kept or used 7 Park Street for the purpose of gaming; but it was strenuously argued that he did not do so for the purpose of unlawful gaming being carried on therein. It was argued that by 12 Geo. 2. c. 28. s. 2, to set up, maintain, or keep the games of the ace of hearts, pharaoh, basset, and hazard was illegal; that, by 13 Geo. 2. c. 19, the game of passage and all other games with one or more dice were illegal; that, by 18 Geo. 2. c. 34, to keep any house, room, or place for playing roulet was illegal; and that gaming at these was the unlawful gaming aimed at by section 4 of 17 & 18 Vict. c. 38, and none other.

I am of opinion that this is not so. When the Act of 17 & 18 Vict. c. 38 was passed, in the year 1854, it is common knowledge that the games of ace of hearts, pharaoh, and basset had fallen into disuse. I cannot suppose that the statute was passed simply to meet the game of hazard and games played with dice, and the keeping of a house in which to play roulet. These were by no means the only games by which gambling was carried on at the period. If this had been the intention of the Legislature, in my judgment it would have particularised those three games, and not have used the most general words possible, namely, unlawful gaming. The real question appears to me to be this: To play at a game of chance with cards for money in a common gaming-house is unlawful gaming—in other words, to game in a common gaming-house is unlawful. To keep a common gaming-house for the purpose of gaming therein is unlawful. To game therein must be either lawful or unlawful. It is not lawful: that is clear. What is it then? I say unlawful. But it is said it may be unlawful in the sense that the law will not aid it, and yet that the law will not punish it. In my judgment, this distinction does not apply to gaming in a common gaming-house; and I am of opinion that the law will punish it, and that it is unlawful in the sense of being criminal. It follows consequently that to game in a common gaming-house is unlawful gaming and criminal.

Jenks v. *Turpin.*

Holding as I do, upon the facts proved, that No. 7 Park Street was kept as a common gaming-house, it is unnecessary to refer to section 2 of 8 & 9 Vict. c. 109, as to what should be sufficient evidence to establish that a house was a common gaming-house; for there is ample evidence in the case as to what No. 7 Park Street in reality was.

I wish also to add that, in my judgment, what was said by Mr. Justice Best in *The King* v. *Rogier* (8) seems to me to be still good law, and therefore common sense, even though the statute of Anne has been repealed. He there says, "It is quite clear that any practice which has a tendency to injure public morals is a common law offence. No game is unlawful in itself; but every game may be rendered so by playing at it for an excessive stake: for it is the amount played for, and not the name or nature of the game, which is the essence of it, and which constitutes an offence in the eyes of the law."

Much criticism was exercised upon the passage by the learned counsel for the appellants. What, it was asked, is "an excessive stake"? It was said that the criminality of a particular act could not depend upon the pecuniary means or position of the particular persons playing. What, it was urged, might be moderate to one man would be altogether excessive to the other, and so on. It was said the excess of the stake could have nothing to do with it. I do not agree. Can it be said that, as to the point whether particular gaming had or had not a tendency to injure public morals, it was immaterial whether it was played say for counters of no value or for hundreds or thousands of pounds. It seems to me that it cannot be. The tribunal before which each case comes will have to determine, if it becomes necessary, whether the stakes played for, the position of the parties, and the circumstances under which they were played for, have or have not a tendency to injure public morals. I see no more difficulty in this than for the tribunal having to decide whether a certain writing has a tendency to bring a man into discredit and disrepute, so as to constitute a libel; or having to decide whether certain acts and sayings have a tendency to alienate the affections of the people by bringing the Government into disesteem, so as to constitute sedition; or having to decide, as it has daily to do, whether the facts proved do or do not constitute the offence charged. Each case must be adjudicated upon on its own merits. If the circumstances of a particular case of gaming are such as to lead the tribunal before which it comes to the conclusion that they tend to injure public morals, then I say that, in my judgment, the offence of unlawful gaming has also been established within the true intent and meaning of section 4 of 17 & 18 Vict. c. 38. If the circumstances of the particular case do not so tend, then the tribunal will so decide.

In the present case, as it seems to me for the reasons given above, it is unnecessary to determine this point; but, had it been, I apprehend that the Court would not have experienced any difficulty in making up its mind upon the subject. I am of opinion, therefore, that Jenks was rightly convicted.

The next question which arises is, were the appellants, the committee-men, properly convicted. Were they persons, within the meaning of section 4 of 17 & 18 Vict. c. 38, having the care or management of or in any manner assisting in conducting the business of the house. The business, as before stated, was that of a common gaming-house for unlawful gaming. By the rules the committee managed the internal arrangements of the so-called club: they elected those who were to be admitted therein: they were the persons who were to make by-laws and regulations for the good order and better regulation of the same: they were the persons who had the power of excluding a member from the club: and it was also proved that, after the police had the cognisance of what was going on at 7 Park Street, they gave orders that between certain days baccarat should not be played by any members of the card-room; and that they subsequently resolved to allow the game to be resumed; and that finally, on the 18th of January, 1884, at a full meeting of the committee, a resolution was unanimously passed sus-

pending the game until after the 31st of January, 1884.

It seems to me that these appellants, the committee-men, did assist in conducting the business of the house within the meaning of the statutes, and that the learned magistrate was quite right in so finding.

The last question is this: were the three appellants who were merely players at the game on the 1st of December, 1883, rightly convicted? This depends upon whether it can be said that they were in any manner assisting in conducting the business of the house. If a man goes into a shop and buys an article therein, can it be said that he was assisting in conducting the business of the shop? He certainly, as it seems to me, avails himself of the business there carried on; but does he assist in conducting the business there carried on? I think not. It is, however, said that the appellants were members of the club. So they were; but, in my opinion, it cannot be maintained that by merely being a member of a club a man thereby assists in conducting its business. He, as before stated, avails himself of its business, but does not, in my judgment, assist in conducting it any more than a customer who purchases an article in a shop. It was further urged that these appellants used the house, and therefore come within the words of section 4 of 17 & 18 Vict. c. 38, which enact "any person, being the owner or occupier, or having the use of any house, room, or place, who shall open, keep, or use the same, &c." In my judgment, the words "having the use of any house" point to a person having the use of a house as a licensee to carry on its business, and do not apply to a person merely going in to avail himself of the business which happens to be carried on there. The words, moreover, in the section applying to persons advancing money for the purpose of gaming with persons frequenting the house, seem to shew also that mere players were not aimed at by the section.

I cannot, and do not therefore, agree with the learned magistrate as to this, and I think that the players were wrongly convicted of the charge preferred against them under the statute. Whether they were guilty of a common-law misdemeanour is another matter, but that is not the point now to be considered. My brother Hawkins has gone through the whole of the statutes and cases brought to our notice by the learned counsel who argued the case, and I do not again now refer thereto.

I am of opinion for the above reasons that the convictions against Jenks and the committee-men should be affirmed, and with costs of this appeal, and that the convictions against the three players should be quashed.

Conviction affirmed against Jenks and the committee-men, with costs. Conviction against the players quashed, but without costs.

Solicitors — Lewis & Lewis, for appellants; Wontner & Sons, for respondents.

[CROWN CASE RESERVED.]

1884. June 28. } THE QUEEN *v.* STEPHENSON AND ANOTHER.

Coroner—Inquest when to be held—Jurisdiction of Coroner how founded—Obstruction of Officer in discharge of Duty—Misdemeanour—Burning of Body to prevent Inquest.

A coroner has jurisdiction, and it is his duty, to hold an inquest where he has information, which he honestly believes, that death may be due to some other cause than common illness. His jurisdiction is not affected by such information being eventually proved to be untrue: it is enough that he bona fide believes and has reasonable ground for believing that the information is such as to call for an inquest.

In cases where a coroner has jurisdiction to hold an inquest, it is a misdemeanour to destroy the dead body in order to prevent the holding of an intended inquest upon it, and to do so amounts to the obstruction of an officer in the discharge of his duty.

Case stated by Hawkins, J., for the decision of the Court for the consideration of Crown Cases reserved:—

"These defendants were tried before

The Queen v. *Stephenson, C.C.R.*

me at the assizes holden at Leeds, on the 15th day of May last, upon an indictment in substance charging them with having burnt the dead body of an illegitimate infant child called (named George Stephenson) to which the defendant Elizabeth Stephenson had recently given birth, with the intent to prevent the holding of an inquest upon it. The defendants were both found guilty; but I deferred passing sentence, and admitted them to bail, until the opinion of the Court of Criminal Appeal could be obtained upon certain questions of law which I reserved at the request of their counsel.

"The defendant Elizabeth was on the 17th of December, 1883, confined of the child in question at the house of a Mrs. Atkinson, at Cayton, near Scarborough, in the North Riding of Yorkshire, with whom it lived until its death on the morning of the 12th of January last. On the 9th of January the defendant Elizabeth took it out for the day; it was then quite well; but on the following day it was very poorly and had fits, and it remained ill until its death. The dead body remained in the house of Mrs. Atkinson until the night of the following Monday, when it was surreptitiously taken away by the two defendants, and burnt, to prevent the coroner from holding an inquest upon it.

"The defendant Ann is the mother of Elizabeth, and they lived together at Cayton in a cottage opposite Mrs. Atkinson's.

"It is fair to the defendants to say that there was no evidence before me to shew that the death of the child was due to any misconduct of theirs; but, nevertheless, the police, in the discharge of their duty, communicated to the coroner for the North Riding the fact of the death of the child, and such information respecting it, the honesty and *bona fides* of which he had no reason to doubt, as led him to the conclusion that it was his duty to hold an inquest upon the body. There was no proof that the information given to the coroner was true, but the coroner honestly believed it to be so. And it must be taken as a fact that if the information was true it was the imperative duty of the coroner to hold an inquest.

"The coroner accordingly appointed the afternoon of the following day, Tuesday, the 15th of January, for the holding of such inquest. Of this the defendants had knowledge on the Monday evening. The jury were duly assembled, and the coroner attended pursuant to his appointment. The inquest, however, could not be holden because the body was not forthcoming, it having been on the night of the Monday secretly taken from the house of Mrs. Atkinson and burnt by the two defendants as above stated.

"At the close of the case for the prosecution, the learned counsel for the defendant (Mr. Stuart Wortley for Ann, and Mr. Mellor for Elizabeth) objected to the sufficiency of the indictment, that the preliminary averments do not allege that the case was a proper one for an inquest, or that the proposed inquest was one which ought to be held; that the information on which the coroner acted should have been set out, and that it ought to have been shewn that the case was one in which the coroner was bound to hold an inquest.

"I reserved these objections for the opinion of this Court. A copy of the indictment accompanies this Case.

"It was then objected that there was no evidence of the truth of the information given to the coroner.

"I overruled that objection, and held that if the information given to the coroner, and honestly believed by him to be true, was such as, assuming its truth, to make it his duty to hold an inquest, he was fully justified in directing the inquest to be holden; and that the jurisdiction of a coroner to hold an inquest does not depend upon the truth of the information furnished to him, but upon his *bona fide* belief in the existence of circumstances communicated to him, which, if true, would make it his duty to interfere and hold a Court of enquiry on view of the body. I gave Mr. Wortley leave, however, to raise the question if he thought fit on the argument of this case. It must, however, be taken that, assuming the circumstances brought to the attention of the coroner to be facts, he was abundantly justified in the course he took.

"The learned counsel for the defendants further objected that, assuming the coroner to have rightly determined to hold the

inquest, and the defendants to have secretly obtained and burnt and disposed of the body with the intent to prevent the inquest being held, and so to obstruct the coroner in the execution of his duty, that did not amount to a criminal offence. I held that it did, and having directed the jury in accordance with these rulings, the jury found both defendants guilty.

"I reserved the questions of law above raised for the opinion of this Court.

"If my rulings are correct, and any one or more counts of the indictment are good, the conviction is to stand. If otherwise, it will be reversed.

"(Signed) H. Hawkins."

Stuart Wortley (*H. G. Taylor* with him), for the defendants.—The charges in this indictment do not constitute a misdemeanour. The foundation of the charge is the interference with the duties of the coroner; and, admitting that it is an offence at common law to obstruct the execution of powers granted by statute, it is contended that the coroner's duty, as created and regulated by Stat. 4 Edw. 1. st. 2, was not here being exercised so as to be obstructed by any act of the defendants. It is necessary for the prosecution to shew that the inquest proposed was one which it was the coroner's duty to hold. The statute says, "where any slain, or suddenly dead or wounded"; and this does not include death from natural causes, as the death of this child was. In *Hale* (1), it is said, the coroner hath no power to take inquisition but touching the death of a man and persons *subito mortuis*. In *The Queen* v. *The Justices of Kent* (2), Lord Ellenborough observes that "it is highly illegal" for coroners to obtrude themselves into private families without any pretence of the deceased having died otherwise than by a natural death. It is clear therefore that mere suddenness of death does not authorise the coroner to hold an inquest. So, too, in *East* (3), it is laid down that "there ought to be at least a reasonable suspicion that the party came to his death by violent or unnatural means." The same view of the coroner's duty is to be found in *Jervis on Coroners* (4). The suspicion here was proved not to be reasonable, and there was in fact no ground for the inquisition. In *The Queen* v. *Price* (5) Stephen, J., in his charge, which dealt with the law on the subject, laid down the proposition that there is no misdemeanour by disposing of a dead body to avoid an inquest unless the inquest be such as it was the coroner's duty to hold. It is found in the present case that the inquest would have been unnecessary, and so illegal.

[STEPHEN, J.—I did not go into the question of the grounds of the coroner's expressed intention to hold the inquest: I still think that it makes a difference if the coroner were capriciously to announce that he would hold an inquest. His duty must, as it seems to me, depend on his reasonable belief.]

All that is found here is that he honestly believed the information given him—not that he had reasonable grounds for believing them. The coroner has never been held to be justified even by reasonable belief. There must be in fact a sudden, that is, according to the above authorities, a violent, death to give him jurisdiction.

[WILLIAMS, J.— Is there not the further consideration whether persons can be guilty of a misdemeanour who, knowing the real facts, that the death is natural, dispose of the body, notwithstanding that the coroner may have reasonably believed the death to have been violent?]

That is part of the defendants' contention, for this being a criminal case the facts must be looked at from the point of view of the accused, who do not know what information may have been given to the coroner, but who do know the true facts, that an inquest is unnecessary.

The case cannot be decided simply by the test whether the coroner could be proceeded against for improperly holding an inquest. In *The Queen* v. *The Justices of Kent* (2) the Court thought there was no improper motive in the coroner, yet his act was described as "highly illegal." It comes back to this, that the death must be violent in fact. Holt, C.J., in *Anon.* (6),

(1) Pleas of Crown, ii. p. 57.
(2) 11 East, 229.
(3) Pleas of Crown, 382.
(4) Ed. 1880, pp. 28, 29, 31.
(5) *Ante*, p. 51; Law Rep. 12 Q.B. D. 247.
(6) 7 Mod. Ca. 15, p. 10.

says, "it is indictable to bury a man that dies of a violent death before inquest"—not, it is to be observed, of a death "reasonably believed to be violent." Again in *The Queen* v. *Clerk* (7), where the finding was that Clerk feloniously cut his own throat. The same insistence on violent death appears in *The Queen* v. *Solgard* (8), 2 *Hawk. P.C.* (9) and *Russell on Crimes* (10).

[STEPHEN, J.—The whole matter is summed up in the report of the Criminal Law Commission in 1834, which accurately represents the state of the law then. In *Fitzherbert Nat. Brev. Iter Northampton Coron.* 319, the suddenness rather than the violence of the death seems to be the important consideration in determining whether an inquest should be held.]

That is founded on an error pointed out in *Hale* (11): *morust de feyme*, starved to death by hunger, had been mistranscribed as died of fever. It is therefore submitted that in every case sudden death has been interpreted to be violent, that there is no authority for the belief of the coroner being enough to give him jurisdiction; but that the fact must exist for his inquest to be legal, and if it does not, there can be no conviction for preventing it.

Meek, for the Crown.—The fallacy of the argument for the defendants consists in the assumption that the statute referred to (4 Edw. 1. st. 2) creates the coroner's jurisdiction, whereas it is merely directory. The common law duties of that officer were not abridged by the statute (12).

It is the duty of the coroner to hold an inquest upon information given to him and believed. The statute says, if he be certified by honest men of the county: it is clear therefore that he must exercise his discretion as to the information, and is not at liberty to disregard it if he believes it to be true. The cases cited, though of violent death, yet rest on the principle of its being the coroner's duty to hold an inquest on information: that is to say, on any reasonable ground of suspicion arising upon information given him. This was in affirmance of the common law, so far as this proceeding was regulated by the statute. If it were necessary that the information upon which he acts be true in fact, he would have to hold a preliminary enquiry. But the jurisdiction does not depend on the truth of the information, but upon the coroner receiving information which he believes to be true, and which if true makes it his duty to hold an inquest.

Assuming it then to be his duty to hold an inquest, it is an indictable misdemeanour for any person having notice of his intention to prevent it.

[MATHEW, J.—Even if that person knows that it is wholly unnecessary and absurd.]

Yes; for the object of the enquiry is to have the true facts found by the jury. It is an offence to obstruct the execution of any Act of Parliament, and the coroner's duties are expressly sanctioned by the Act (13). In *The Queen* v. *Smith* (14), Ashurst, J., says that "it is an offence at common law to obstruct the execution of powers granted by statute." A man might be convicted of an assault on and obstructing a police officer in the execution of his duty, if he purported to be so acting and was a police officer, irrespective of the consideration of how the particular duty arose. Here on the face of the case it is found that the information was such as would justify the holding of the inquest, and the defendants knew that the inquest had been appointed, and destroyed the body to prevent it.

Stuart Wortley, in reply.—The passage cited from *The Queen* v. *Smith* (14) was a *dictum* only of Ashurst, J. If actual violence need not be proved, at any rate it ought to have been alleged in the indictment as believed to exist, as much as suddenness, to shew the foundation of the coroner's jurisdiction.

GROVE, J.—In this case I am of opinion that the conviction should be affirmed. There are two points only submitted for our consideration and decision—first, whether it is an indictable misdemeanour wilfully to prevent the holding of an inquest of which the coroner has given notice; and, secondly,

(7) 1 Salk. 377.
(8) 2 Stra. 1097.
(9) Bk. ii. c. 9. s. 23.
(10) i. 620.
(11) Pleas of Crown, ii. p. 56.
(12) Hawk. P.C. 3.
(13) Russell on Crimes, i. 194.
(14) 2 Dougl. 441.

whether there is enough on the face of the case here to shew that the coroner had the right and power to hold this inquest.

On the first point there is no case reported absolutely decisive; but there are many cases, such as that cited by Mr. Meek in argument, much less strong in fact than this, which shew that interfering with the performance by an officer of his statutory duty is a misdemeanour at common law. This principle of course would not be carried into matters where the statute prescribing the duty relates only to procedure; but it cannot be said that the holding of an inquest is mere procedure: on the contrary, it is a matter of great importance to the public. If the coroner, on reasonable grounds shewn to him for so doing, is about to hold an inquest, and yet any person in order to prevent such inquisition can destroy the body with impunity, the consequences will be most formidable. Some such consequences were pointed out by the Court during the argument. Murder, more especially child-murder, might be undetected and unpunished; for there might be cases where the only proof of the crime might depend on the examination of the body, and by the destruction of the body all evidence and probability of evidence would be destroyed. The very object of holding an inquest is to ascertain the cause of death; and if the body cannot be examined, the effect will be to prevent the due course of justice, and deprive the public of a valuable protection to life.

It has been argued before us that in the present case the prisoners cannot be convicted, although the coroner acted on reasonable evidence in determining to hold the inquest, if it should turn out in fact that the inquest was unnecessary.

This argument seems to me to involve a *petitio principii*, because the inquisition being to enquire into the cause of death, if a preliminary enquiry be necessary, that will itself result in finding out the cause of death, and the real inquisition would not be wanted. It is said that the coroner should be certain of the cause of death before he summons an inquest; but this does not appear to be the duty of the coroner as defined in the statute of Edw. 1. (4 Edw. 1. st. 2). His duty is to act on information; by the inquest the information is tested. The statute referred to is declared (15) to be not creating a jurisdiction, but in affirmance of the common law, and merely directory. It says this—"The coroner, if he be certified by the king's bailiffs or other honest men of the county, shall go to the place where any be slain, or suddenly dead or wounded." Nothing is said about murder. The cause of death is to be the subject of the enquiry, and "after enquiry the body shall be buried." Then in the second part of the statute, "In like manner it is to be enquired of them that be drowned or suddenly dead; and after, such bodies are to be seen, whether they were so drowned or slain." The whole wording of the statute shews that an enquiry is to be made and the body examined of any person suddenly dead, and by such examination and enquiry the cause of death is to be ascertained. Such enquiry, however, would be useless if the coroner had to be satisfied beforehand of the cause of death.

That being the coroner's duty according to the statute, do not the facts here shew that this coroner had a reasonable suspicion, to use the words in *East's Pleas of the Crown* (16), that the child came to its death by violent or unnatural means? I think that he had, and more than a reasonable suspicion. "The police, in the discharge of their duty, communicated to him the fact of the death, and such information respecting it, the honesty and *bona fides* of which he had no reason to doubt, as led him to the conclusion that it was his duty to hold an inquest." I cannot entertain any doubt that it was his imperative duty, for he honestly believed the information to be true.

It is, then, found as a fact that the body was burned in order to prevent the holding of the inquest. Is not that an offence? In the case in 7 Mod. Rep. (6) it is said, "It is matter indictable to bury a man that dies of a violent death before the coroner's inquest." True the expression there is "violent death"; but that does not necessarily mean proved to be violent before the holding of the inquest; and, as the

(15) Bracton, III. ch. 5; Horne's Mirrour, p. 38.

(16) 1 East P.C. 382.

circumstances of death cannot be accurately ascertained until the inquest is held, it is, I think, equivalent to "apparently violent death." This passage from Lord Holt is enough to shew that the present defendants have committed a misdemeanour, as they destroyed the body before the inquest, and with the object of preventing its being held. If it is a crime in the case of burial, *a fortiori* is it so in the case of burning, whereby the body is wholly destroyed, and all traces even of poison, with the exception of certain mineral poisons, obliterated.

It is enough to say that the coroner had a right to hold the inquest, and the prisoners in intentionally burning the body before he could hold it were guilty of a misdemeanour, and rightly convicted.

STEPHEN, J.—I am of the same opinion. The matter falls into a few plain propositions: first, it is a misdemeanour to destroy a body on which an inquest ought to be held, in order to prevent such an inquest being held. That this is the law appears to result from many cases and authorities, from the Year-Books, from the cases in *Modern Reports* (6), in *Salkeld* (7), and others, all of which are summed up in the Report of the Criminal Law Commissioners, published between 1841 and 1845. That being the law, it is not, however, expressly decided in what cases an inquest ought to be held. We have therefore, secondly, to decide this point. If it is a misdemeanour to interfere where an inquest ought to be held, is it also a misdemeanour to interfere where the coroner thinks it ought to be held? I had to deal with this case in charging the grand jury in *The Queen* v. *Price* (5); and though the point has not been decided by authority previously, it must not be supposed that in this Court we are creating a new offence in what we now say; we are only declaring the law as it exists, in drawing the line round certain offences rather more clearly. I adhere to the view which I stated in *The Queen* v. *Price* (5) in these words, which I read because I cannot better express my meaning: "It is a misdemeanour to prevent the holding of an inquest which ought to be held by disposing of the body. It is essential to this offence that the inquest which it is proposed to hold is one which ought to be held. The coroner has not absolute right to hold inquests in every case in which he chooses to do so. It would be intolerable if he had power to intrude without adequate cause on the privacy of a family in distress, and to interfere with their arrangements for a funeral. Nothing can justify such interference except a reasonable suspicion that there may have been something peculiar in the death, that it may have been due to other causes than common illness. In such cases the coroner not only may, but ought to hold an inquest; and to prevent him from doing so by disposing of the body in any way—for an inquest must be held on the view of the body—is a misdemeanour." I say the same again now, and on the grounds so fully expressed by my brother Grove; any other view of the law would result in an absurdity. If a coroner were to insist on holding an inquest without any reasonable grounds for doing so, I am far from saying that he might not be liable to an action. But if a person chooses to destroy a body to prevent an inquest, he takes his chance of establishing afterwards that the coroner was absolutely wrong in his proposal and intention to hold it, and he is guilty of an offence if the intended inquest were one which might lawfully be held. If he does so destroy a body, his act is an obstruction of an officer in the performance of his duty; and were there no closer authorities than the general ones as to such obstruction, the act would be shewn to amount to a misdemeanour. In the present case the facts are short and simple. The coroner had information which he believed, and which if true made it his duty to hold the inquest; the defendants, knowing this, and in order to prevent his carrying out his duty, destroyed the body, and were, in my opinion, rightly convicted.

WILLIAMS, J.—I agree upon the only point really reserved. I am clearly of opinion that this conviction must be affirmed, and I should not add a word, but for other points having been brought forward during the discussion not within the case. There are two propositions—one is, if a coroner has information which he believes, and such information would jus-

tify his holding an inquest, his duty is to hold the inquest. As to this I am quite clear that his duty to hold the inquest, and his jurisdiction to do so, depend on his having such information, and *bona fide* believing it to be true. The only other proposition is, that the obstruction of a coroner in the performance of such duty by destroying the body is a misdemeanour at common law. To this I say I have no doubt that it is.

MATHEW, J.—I am of the same opinion that the conviction should be affirmed. I do not think, however, that we are in any way precluded from dealing with all the questions argued before us. Was there any interference with the statutory duties of the coroner? It is said not, because the coroner can only hold an inquest where a crime has been committed or the death has been violent. But, looking at the statute and the cases, it is perfectly clear that his jurisdiction is not so limited, and that he has to act and is bound to act on reasonable information. Then it is said that there is no authority to shew that it is a crime to interfere with a proposed inquest, unless the defendants knew the information upon which the coroner was acting, and unless such information proved to be true in fact. That argument would put on other persons than the coroner, the duty of deciding when an inquest is to be held and when not; and it would never do to take from the officer, whose plain duty it is, the right and responsibility of such decision.

HAWKINS, J.—At the trial I had no serious doubt on the matter, and the result has been what I anticipated; but I was willing to reserve the case, as one of general importance, both in respect of the questions involved and the defendants themselves. In my judgment, if a coroner has information which, if true, makes it his duty to hold an inquest, and if he honestly believes in its truth, his duty to hold such inquest arises. Jurisdiction does not depend on the truth of the facts constituting his information, but on his *bona fide* belief in their truth; and jurisdiction to enquire cannot depend on the actual result of the enquiry by means of which those facts are tested.

It is here expresly found that the coroner had such information, and he believed it to be true. Thereupon it was his duty to hold the inquest; and, having such duty, I am quite clear that to destroy the body, so as to make it impossible that the inquest on the body should be held, was an obstruction of an officer in the execution of his duty. The defendants were therefore guilty of a misdemeanour, and the conviction was clearly right.

Conviction affirmed.

Solicitors—Iliffe & Co., agents for Tasker Hart, Scarborough, for the Crown.

1884. June 16. HUNTER *v.* JOHNSON.

Elementary Education Acts—By-laws—Detention after Hours—"Home Lessons"—Assault—33 & 34 *Vict. c.* 75. *s.* 74.

The master of a Board school established under the Elementary Education Acts has no right, in the absence of authority in that behalf in the statutes or by-laws, to detain a child after the regular school hours in default of learning home lessons which the child's mother had forbidden him to learn and forbidden the master to set; and keeping the child in and preventing him from leaving the school in such circumstances amounts to a criminal assault.

Case stated by the Justices of the borough of Bradford upon a summons charging the respondent with assaulting the appellant.

The appellant was a child of ten years of age, residing with his mother, who was his guardian, at Tyersal in the borough, and the respondent was a master at the Tyersal school established by the Bradford School Board.

On and previously to the 20th of September, 1883, the hours of school for the instruction of the children of the age of the appellant were from 9 A.M. to 12 noon, and from 2 P.M. to 4.30, during five days a week, but it had been the practice for the

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teachers to set "home lessons," to be learned outside school hours.

Previously to the day in question the appellant's mother forbade him to learn "home lessons," and gave notice to the respondent in writing that she had done so, with a request that they should not be set to him in future.

On the 20th of September, 1883, the appellant, not having learned his "home lessons," was kept in and prevented from leaving the school after the regular school hours for three quarters of an hour, from 12 noon to 12.45, by the respondent, and made to learn his "home lessons."

The material by-law of the Bradford School Board was as follows:—

"The time during which every child shall attend school shall be the whole time for which the school selected shall be open for the instruction of children of similar age, including the day fixed by her Majesty's inspector for his annual visit."

The Justices dismissed the summons.

Woolf, for the appellant.—The by-law had been fully complied with by the child on the day in question at 12 noon, and his detention after that time was an assault. The liability to attend school depends entirely on the Elementary Education Acts and the by-laws made under them, and these do not make the child liable to attend after the regular hours, nor authorise "home lessons," nor allow a child to be kept in for not learning "home lessons." It was a criminal assault to restrain unlawfully the liberty of the child—*Bird* v. *Jones* (1).

The respondent did not appear.

MATHEW, J.—Having regard to the enactments and by-laws in question, I am of opinion that there is no authority to impose on a child the duty of studying at home. Learning lessons at home is part of the ordinary course of a child's education; but we must deal with compulsory education as a statutory interference with the liberty of the subject. No power to enforce "home lessons" is given by the statutes or by-laws. The master was wrong in directing the child to study at home, and the child was punished for disobedience to orders which the master had no power to give. I had some doubt whether what was done amounted to an assault, but, bearing in mind that the child was kept in as a punishment, and could not have gone away, I think the case is brought within the authorities on the subject. It is therefore a case for a conviction and the infliction of a nominal penalty.

DAY, J.—I am of the same opinion.

Appeal allowed.

(1) 7 Q.B. Rep. 742; 15 Law J. Rep. Q.B. 82.

Solicitors—Indermaur & Brown, agents for Newton Rhodes, Bradford, for appellant.

1884. May 22. THE GUARDIANS OF MERTHYR TYDVIL UNION (*appellants*) *v.* THE GUARDIANS OF STEPNEY UNION (*respondents*).

Poor — Settlement — Irremovability — Residence—39 & 40 *Vict. c.* 61. *s.* 34—*Mother and Son—Breach of Residence.*

The pauper was born in the appellant union, and had been engaged as a sailor in the merchant service. The pauper's mother lived in the respondent union, and the pauper had since 1876 *lived with her between his different voyages. When the pauper was away at sea or otherwise, he invariably left some of his clothes and other belongings at his mother's house, but had no separate bedroom or bed. Upon returning home from any voyage the pauper was in the habit, up to the date of his discharge in* 1883, *of handing over to his mother a portion of his savings*:—Held, *upon the above facts, that the Justices were justified in holding that the pauper had not acquired a settlement by residence in the respondent union under* 39 & 40 *Vict. c.* 61. *s.* 34.

On appeal against an order made the 6th of June, 1883, adjudging the last legal settlement of John Mullines to be in the parish of St. Paul, Shadwell, in the Stepney Poor Law Union, in the county

of Middlesex, and ordering the said John Mullines to be removed from the said Merthyr Tydvil Union to the said Stepney Poor Law Union, the Sessions of and for the county of Glamorgan confirmed the order, subject to the opinion of the Court upon the following case.

The order alleged that the pauper was settled by birth in the parish of St. Paul, Shadwell, in the appellant union; and the appellants admitted his birth in the said parish, but set up (1) that he had acquired a subsequent settlement by residence in the parish of Aberdare in the respondent union, and (2) that even if he had not acquired such subsequent settlement, he was at the date of the order irremovable from the respondent union, he having resided therein for a year and upwards without relief.

1. The pauper was born in the appellant union in the year 1849, and resided with his parents until the year 1865, when he accompanied his father to America, leaving his mother at Swansea.

2. In August, 1866, the pauper's father died in South Carolina, and the pauper returned to his mother, arriving at Swansea on Christmas Day in that year.

3. From Christmas Day, 1866, up to the autumn of 1871, the pauper gained his livelihood by various employments on shore at Swansea, and by going to sea as a sailor on voyages of various duration and in vessels belonging to various owners. The pauper attained his twenty-first birthday (which fell on the 24th of June, 1870) when he was acting as an able-bodied seaman in the Mediterranean on board a vessel called the *Round Shot*. While working on shore he lived with his mother where she resided, and when following the sea always returned to and resided with her after each voyage and until the commencement of the next voyage.

4. In the autumn of 1871 the pauper shipped from Swansea for India and back, and at the end of his voyage in August, 1872, went to his mother, who had removed during his absence from Swansea to the parish of Aberdare in the respondent union, and had married as her second husband one William Crammer.

5. The stepfather William Crammer died on the 22nd of November, 1875, at which time the pauper was in India, where he had gone in the *Mecca*, and whence he returned in January, 1876, in the *Glenlyon* to London.

6. During the stepfather's life, the pauper when on shore resided, in the intervals of frequent voyages and when occupied as a labourer on shore, at his stepfather's house, and during the longer periods, which in no case exceeded four or five months, paid for his lodgings and food.

7. The pauper was discharged from the *Glenlyon* on the 26th of January, 1876, in London, when he at once returned to his mother's house at Aberdare, and remained there until the following June. He then joined the *Etna* at Cardiff, and was discharged from her at Leith on the 31st of July, 1876.

8. Upon his discharge from the *Etna* at Leith he returned to his mother's house at Aberdare, where he remained until the 31st of August, 1876, when he joined the *Murton* at Swansea, and, after remaining on board her two months, left her at Briton Ferry on the 25th of October, 1876.

9. Upon leaving the *Murton* at Briton Ferry, he went to Cardiff to get a ship, where he remained until the 24th of November, 1876, when he shipped on board the *Lady Clive* for the Mediterranean, and, after remaining on board her for five or six weeks, was discharged from her at Newport, Monmouth, on the 2nd of January, 1877.

10. After his discharge from the *Lady Clive* at Newport, he went to Cardiff to get a ship, and upon the 4th of January, 1877, shipped on board the *Karo*, a Sunderland steamer, for India, from which vessel he was discharged, on her return from India, at Sunderland, on the 7th of May, 1877.

11. After his discharge from the *Karo* at Sunderland, he went to Cardiff to get a ship, and on the 5th of June shipped on board a Hartlepool boat called the *Richmond*. After two trips to the Mediterranean in the *Richmond*, returning to Cardiff between each trip, during which time he slept on board, he was discharged from her at Shields on the 24th of September, 1877, and after visiting an uncle at Sunderland for a month he returned to his mother's house at Aberdare, and re-

mained there until early in the following December.

12. On the 4th of December, 1877, he shipped on board another Hartlepool boat, called the *Himalaya*, at Cardiff, and after two trips in her (returning to Glasgow between the trips, during which time he slept on board) he left the *Himalaya*, in London, on the 26th of June, 1878.

13. After looking about for a ship for a few days in London, he shipped from there for India on the 10th of July, 1878, on board the *Star of Italy*, from which vessel he was discharged, together with all the other hands, at New York on the 21st of February, 1879.

14. Immediately after his discharge from the *Star of Italy* at New York, he shipped on board a Nova Scotia vessel, called the *H. Bogut*, for London, where he left her at the end of March, 1879, and shipped at once as a hand on board a Cardiff-bound steamer, and arrived at Cardiff in the course of a few days, and returned to his mother's house at Aberdare, where he remained until the middle of the following month of May, 1879.

15. On the 16th of May, 1879, he joined the *Cartsburn*, at Cardiff, for Calcutta and back, and upon his discharge from her at Dundee on the 11th of April, 1880, he at once went to his mother's house at Aberdare, where he stayed a few weeks, until the end of the following month of May, 1880.

16. On the 31st of May, 1880, he shipped at Cardiff on board the *Euphrates* for Calcutta and back, and, after completing a voyage out and home, was discharged from her in London on the 31st of March, 1881, and went to his mother's house at Aberdare, where he remained for a month.

17. He then went to Cardiff, where he got a job to rig a vessel called the *Buckhurst* at Gunn's dry dock, during which time he lodged and slept at the Sailors' Home, returning to his mother's house at Aberdare from the Saturday to Monday previous to his shipping on board the *Beatrice*, at Cardiff, on the 8th of June, 1881.

18. After going certain voyages in the *Beatrice*, he was discharged from her at Newport, Monmouthshire, on the 9th of August, 1881, when he at once returned to his mother's house at Aberdare. After remaining there for a week or two, he obtained work under the Great Western Railway Company, at Quaker's Yard (distant five miles from Aberdare), which lasted until early in the following November, 1881, during the first portion of which period he slept at his mother's house at Aberdare.

19. Afterwards, on account of the inconvenience of coming to and from his work, he ceased to return at night from Quaker's Yard, and then slept at a cottage near Quaker's Yard, which is in the parish of Merthyr, also in the respondent union, returning to his mother's house at Aberdare from Saturday to Monday in each week, and either took down food or had it sent him by his mother, by whom he had his washing done, and his clothes were left with her. He contributed to the house while with his mother, and generally brought home what he could.

20. As soon as the job at Quaker's Yard was concluded, he returned to his mother's house at Aberdare, where he remained for a week or two, and then went to Cardiff, where, upon the 21st of November, 1881, he shipped on board the *Cordillera* for a voyage to Sydney and back, and from which vessel he was discharged, in London, on her return to that port on the 20th of February, 1883.

21. In or about March, 1882, he became blind from the effect of cold on board the *Cordillera*, and, at the captain's request, his mother came to meet him in London when discharged, and he returned with her on the 21st of February, 1883, to her house at Aberdare, where he remained until he made his first application for relief on the 25th of May, 1883.

22. When he went on board the *Cordillera*, he left all his things, except his sea clothes, at his mother's house at Aberdare, and he invariably left some of his clothes, his sea-chest, or other belongings, at her house, upon those occasions when he himself was away at sea, or otherwise. His mother sometimes bought his clothes for him, and occasionally met him on his return from his voyages.

23. At the conclusion of his voyages, he returned to his mother's house, and remained there between his voyages, except upon the occasion hereinbefore mentioned,

but he had no separate room or bed there, and generally slept with his brother.

24. Upon returning home from any voyage, he was in the habit, up to the date of his discharge in February, 1883, of handing over to his mother a portion of his savings.

The questions for the opinion of the Court are, (1) whether under the circumstances stated, the pauper had, during the period which elapsed from the death of his stepfather on the 22nd of November, 1875, to the date of the order, acquired a settlement by residence (actual or constructive) in the parish of Aberdare, in the respondent union, under 39 & 40 Vict. c. 61, and (should such question be answered in the negative) then, (2) whether the pauper was, at the date of the order, irremovable from the respondent union, by reason of a residence therein (actual or constructive) for a year without receiving relief during the same period.

If the Court shall answer either of these questions in the affirmative, then the order of the Sessions is to be quashed; but if the Court shall answer each of the said questions in the negative, then the order of the Sessions is to be confirmed.

B. F. Williams, for the appellants.—The only question here is whether the pauper acquired a settlement by residence in the respondent union under 39 & 40 Vict. c. 61. s. 34 (1). Upon the facts stated in the Special Case it is submitted that the Justices were wrong in holding that the pauper was not settled in Aberdare. The pauper's residence was clearly at his mother's house, which he assisted in keeping up, and to which he returned upon the completion of his voyages. If residence is once established, a mere temporary absence will not signify so long as the *animus revertendi* is shewn to exist. *The Queen* v. *Glossop* (2) will doubtless be relied upon by the respondents; but in that case there was no fixed intention to return and no place to which the pauper had any right to return. Here the *animus revertendi* is clear, and it is found as a fact that the pauper invariably left some of his clothes or other belongings at his mother's house upon those occasions when he himself was away at sea, besides handing over a portion of his savings; so that the fair inference is that the pauper never ceased to have a constructive residence in the respondent union.

He cited *The Queen* v. *East Stonehouse* (3) and *The Queen* v. *Brighthelmstone* (4).

W. Evans, for the respondents.—*The Queen* v. *Glossop* (2) shews that in order to constitute a constructive residence there must be a place to which a pauper has a right to return, as well as an intention to return. Here there is no finding of an *animus revertendi*, and certainly the pauper had no place of his own to which he had the right to return.

Williams replied.

STEPHEN, J.—This case has been well argued, and each side has succeeded in introducing doubts into my mind. In 1846 five years was fixed as the period of residence necessary to render any pauper irremovable; this period was subsequently reduced to three years, and at a later date still to one year; but the Act of 1846 is the foundation of the whole so far as the status of irremovability is concerned. Now the question before us is whether this pauper resided for three years in the parish of Aberdare, within the respondent union, in such manner as to have acquired a settlement under the provisions of 38 & 39 Vict. c. 61. s. 34 (1). This question is, to some degree, one of fact, and does not admit of any general rule being laid down on the point; at the same time there are principles of law decided by various cases which serve as guides to determine whether there has or has not been a residence on the part of the pauper. There are several cases which shew that if a person has resided in a parish and removes for a temporary purpose only, there is no breach of residence.

(1) 39 & 40 Vict. c. 61. s. 34: "Where any person shall have resided for three years in any parish in such manner and under such circumstances in each of such year as would, in accordance with the several statutes in that behalf, render him immovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise."

(2) 35 Law J. Rep. M.C. 148; Law Rep. 1 Q.B. 227.

(3) 4 E. & B. 901; 23 Law J. Rep. M.C. 137.

(4) 4 E. & B. 236; 24 Law J. Rep. M.C. 41.

Guardians of Merthyr Tydvil v. *Guardians of Stepney.*

In order to constitute a residence one need not sleep at a place every night. I should have no hesitation in holding that there was no breach of residence in the case of a person who had a house which he made his headquarters and where he kept his servants, though it might so happen that he was away during almost all of the qualifying period; in such a case the *animus revertendi* would clearly exist. Therefore I do not feel concluded by the fact that this pauper, in the exercise of his profession, was away from home for longer periods of time than he was at home. But the question is, had the pauper a residence in Aberdare? That is a question of fact, and the present case is very like that of *The Queen* v. *Glossop* (2). Here the pauper lived with his mother when not engaged elsewhere. There was, however, no contract with his mother, and the pauper had no right to reside with her if she had chosen to turn him out of doors; he did not lodge there, but was merely accustomed between the voyages to stay at his mother's house, and he gave her a portion of his savings. Upon these facts the Sessions came to the conclusion that there had been no real residence in Aberdare, and I cannot, as a matter of law, say that the Sessions were wrong in so holding.

MATHEW, J.—I am of the same opinion. I am not satisfied that the magistrates were wrong in holding as they did. The pauper appears to have treated his mother well, and to have given her a portion of his savings; but it does not appear that the mother's house was a place to which the pauper had any right to return as a residence. The case is one of some nicety; but I think, upon the whole, that the order ought to be affirmed.

Order affirmed.

Solicitors—W. H. Swepstone, for appellant; J. H. Wrentmore, agent for James & Co., Merthyr Tydvil, for respondent.

1884. May 20, 27. WILLIAMS (*appellant*) *v.* THE WANDSWORTH BOARD OF WORKS (*respondents*).

Metropolis Management Act, 1855 (18 & 19 *Vict. c.* 120), *s.* 250—"*Owner*"—*Metropolis Management Amendment Act*, 1862 (25 & 26 *Vict. c.* 102), *s.* 77—"*Owner of Land abutting on*" *New Street*—*Liability to contribute to Expenses of Paving—Owner of Strip a few inches wide bound to maintain Fence.*

The owner of a strip of land which was only four inches wide, and upon which he was bound by covenant to maintain a fence throughout its entire length, was called upon by a district board under the Metropolis Management Amendment Act, 1862 (25 & 26 *Vict. c.* 102), *s.* 77, *to contribute to the expenses of paving a new street upon which the strip abutted*:—Held, *that he was one of "the owners of the land abutting on the" street, within the meaning of that section and of the Metropolis Management Act*, 1855 (18 & 19 *Vict. c.* 120), *s.* 250, *interpreting the word "owner."*

The following case was stated under the Summary Jurisdiction Act, 1879, s. 33, by a Metropolitan Police Magistrate sitting at the Wandsworth Police Court.

The respondents, who are the board of works for the Wandsworth district constituted under the Metropolis Local Management Acts, 1855 and 1862, took out a summons to obtain payment from the appellant, as owner of lands abutting upon a new street called Shipka Road, within their district, of a sum of 88*l.*, being his proportion of the expenses incurred by them in paving the street. The appellant's land in question consisted of a strip of about 4 inches wide and 265 feet in length, bounding and abutting upon the north side of the Shipka Road, and a boundary fence was erected upon it throughout its whole extent. The appellant erected the fence in pursuance of a covenant made by him with a third party to erect, maintain, and keep up such a fence upon the strip of land, of which the appellant retained the ownership and occupation. The strip of land was the only

land of the appellant on the north side of the Shipka Road.

It was admitted that the Shipka Road was a new street, and that all the preliminary steps and proceedings necessary to entitle the respondents to recover the sum of 88*l.* from the appellant, if he were liable to pay the same, had been duly taken by the respondents. It was contended for the respondents that the appellant was an owner of land bounding or abutting upon the street within the meaning of section 77 of the Metropolis Local Management Amendment Act, 1862, and section 250 of the Metropolis Local Management Act, 1855, and liable, as such owner, to contribute towards the expenses of paving the street. It was contended for the appellant that the words "owner of land" in section 77 of the Act of 1862 meant, having regard to the interpretation clause (section 250) in the Act of 1855, an owner of land which can be used for some purpose beneficial to the owner and capable of yielding a rack-rent; that the appellant, therefore, was not, having regard to his covenant to erect and maintain a fence upon the strip of land, the "owner" within the meaning of the Acts; and, further, that the strip of land was too small in size to be of any real value to him, and was burthened besides with the maintenance of a fence of a specified kind.

The Magistrate made an order upon the appellant to pay the sum claimed, holding that the appellant was an owner of the strip of land within the meaning of the Acts of 1855 and 1862, and therefore liable to pay his proportion of the expenses of paving the new street.

The question for the opinion of the Court was whether, upon the facts stated, and having regard to the provisions of section 77 of 25 & 26 Vict. c. 102, and section 250 of 18 & 19 Vict. c. 120, the appellant was, in respect of the strip of land in question, "an owner" of land bounding or abutting on the Shipka Road.

Francis Turner (on May 20), for the appellant.—The appellant cannot be held to be, in respect of this strip of land, an "owner of land bounding or abutting on" a new street, within the meaning of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250, interpreting the word "owner" (1), and of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77, imposing on "the owners of the land bounding or abutting on" a new street liability to contribute to the expense of paving it. To make a man an "owner" within the meaning of these enactments there must be a beneficial ownership, capable of producing a rack-rent —*The Great Eastern Railway Company* v. *The Hackney District Board of Works* (*per* Lord Watson) (2); and, further, this cannot be said to be, within the meaning of the Legislature, "land bounding or abutting on" the new street—*The London, Brighton, and South Coast Railway Company* v. *St. Giles, Camberwell* (3).

He referred to *Higgins* v. *Harding* (4).

R. O. B. Lane, for the respondents.—On the true construction of the Acts, the appellant is liable, and the authorities make against him—*Lord Northbrook* v. *The Plumstead Board of Works* (5), *Bowditch* v. *The Wakefield Local Board* (6), which are approved, not overruled, in *The Great Eastern Railway Company* v. *The Hackney District Board of Works* (2).

He referred to *The Plumstead Board of Works* v. *The British Land Company* (7).

Turner, in reply.

Cur. adv. vult.

The judgment of the Court (8) was delivered (on May 27) by

HAWKINS, J.—This case was argued before us last week. By 18 & 19 Vict. c. 120. s. 250, the word "owner" shall mean "the person for the time being receiving the rack-rent of the lands or premises in connection with which the said word is used, or who would so receive the same if

(1) The interpretation clause is set out in the judgment.

(2) 52 Law J. Rep. M.C. 105, at p. 109; Law Rep. 8 App. Cas. 687, at p. 693.

(3) 48 Law J. Rep. M.C. 184; Law Rep. 4 Ex. D. 239.

(4) 42 Law J. Rep. M.C. 31; Law Rep. 8 Q.B. 7.

(5) 41 Law J. Rep. M.C. 51; Law Rep. 7 Q.B. 183.

(6) 40 Law J. Rep. M.C. 214; Law Rep. 6 Q.B. 567.

(7) 44 Law J. Rep. Q.B. 38; Law Rep. 10 Q.B. 203.

(8) Hawkins, J., and Smith, J.

such lands or premises were let at a rack-rent."

By 25 & 26 Vict. c. 102. s. 77 (which is to be read as one Act with 18 & 19 Vict. c. 120), the owners of the land bounding or abutting on any new street paved under section 105 of 18 & 19 Vict. c. 120 are made liable to the expenses of paving the same, as well as the owners of the houses therein.

The Shipka Road is admitted to be a new street, and it is admitted that the appellant is the freeholder of the strip of land, with the fence thereon erected, abutting or bounding it on its northern side. The only remaining question is, whether that strip of land is capable of being rack-rented. If it is, no doubt can arise that the appellant would be entitled to receive the same if such strip were let. The appellant seeks to absolve himself from liability to contribute towards the paving expenses, upon the ground that, although he is the owner of the strip of land and fence, nevertheless he is by virtue of the covenant bound to occupy the strip for the purpose of maintaining thereon a boundary fence; and that even if he were not so bound, the strip is too narrow to admit of any beneficial occupation.

We think both these objections fail. The fence in question is, after all, a mere boundary-fence between the estate of the appellant and the vendor from whom he bought. If he had erected it voluntarily, nobody could have doubted his liability. It would have amounted to an occupation of his land in a way selected by himself. It makes no difference, to our minds, that he so occupies it because he has agreed with his vendor so to do upon becoming the purchaser of the estate. He uses the strip for the purpose of fulfilling a covenant voluntarily entered into by himself, and to protect himself against liability for a breach of that covenant; and, moreover, there can be no doubt, now that the Shipka Road is made, that the strip which intervenes between the road and the adjoining property to the north, would, in the event of the owner of such adjoining property desiring to have access to the road, command a very considerable rent from such adjoining owner. It is unnecessary to speculate upon other profit which might be derived from the strip. The case of *The Great Eastern Railway Company* v. *The Hackney District Board of Works* (2), which was so much pressed upon us during the argument for the appellant, does not, in our opinion, assist him. In his judgment Lord Watson says, "The authorities cited in the course of the argument appear to me to establish this proposition—that the person vested with the property of heritable subjects which have been placed *extra commercium*, or are subject in perpetuity to the burden of a public right which deprives them of their beneficial use, is not an owner of the land within the meaning of the 77th section of the Act of 1862." There is, however, no ground for saying that the appellant's strip of land falls within this category.

In our judgment, this case is, in all its essential circumstances, similar to *The London and North-Western Railway Company* v. *St. Pancras* (9), which appears to us to be a very strong authority in favour of the respondents, for whom we think judgment ought to be given.

Judgment for the respondents.

Solicitors — Boulton, Sons & Sandeman, for appellant; Corsellis, Son & Mossop, for respondents.

1884. Feb. 22. March 8. } THE PARIS AND NEW YORK TELEGRAPH COMPANY *v.* THE PENZANCE UNION.

Poor—Rate—Telegraph Wires—Exclusive Occupation—43 Eliz. c. 2.

By the terms of an agreement between the plaintiffs and the Postmaster-General, the latter covenanted that he would provide and thenceforth during the continuance of the agreement appropriate and maintain for the exclusive use of the plaintiffs certain telegraph wires between the landing-place of a submarine cable near the Land's End

(9) 17 Law Times, N.S. 654.

and the office of the plaintiffs at Penzance, and thence to their office in London, with the necessary translators and batteries: such wires, translators, and batteries to remain the property of the Postmaster-General. The plaintiffs were to provide and maintain their own instruments, and to work the wires at their own cost, permitting the Postmaster-General from time to time to inspect the instruments. The Postmaster-General was to repair accidental defects and interruptions, but to be paid for making good any damage to the wires occasioned by the neglect or default of the plaintiffs. The plaintiffs were to pay rent for the wires, and not to part with the possession of them or sub-let the benefit of the agreement without the consent of the Postmaster-General, who, in the event of their doing so, was to be at liberty to determine the agreement. On the expiration of the agreement the Postmaster-General was to resume possession of the wires. The telegraph posts remained the property of the Postmaster-General, who could, if he chose, attach other wires to them besides those appropriated to the use of the plaintiffs:— Held, *by* CAVE, J. (LORD COLERIDGE, C.J., *dubitante*), *that the plaintiffs had not such an exclusive occupation of the wires appropriated to their use as would make them rateable to the relief of the poor in respect thereof.*

Special Case under 12 & 13 Vict. c. 45. s. 11.

2. The applicants are a telegraph company owning certain submarine cables between France and America, and also working submarine cables between France and a point on the Cornish coast near Land's End, and carrying on the business of a telegraph company in connection therewith.

3. In order to carry on their business as aforesaid, the appellants on the 14th of April, 1880, entered into an agreement with certain telegraph companies, who were possessed of the concessions for the laying of submarine telegraphic cables between England and France, for the construction of a telegraphic cable between the aforesaid point near Land's End and a part of the French coast; and also with her Majesty's Postmaster-General. [A copy of the agreement was appended to the case.] (1).

(1) The material covenants in this agreement, as between the appellant company and the Postmaster-General, are the following:—

10. The Postmaster-General shall with all convenient speed provide and shall thenceforth during the continuance of this agreement keep appropriated and maintained for the exclusive use of the Paris and New York Company the following telegraph wires (hereinafter called special wires), that is to say,—

(1.) A telegraph wire between the landing-place of the Déolin cable near the Land's End, in the county of Cornwall, and an office to be established by the company at Penzance.

(2.) A telegraph wire between the office to be established by the company at Penzance and an office to be established by the company in London.

(3.) A telegraph wire between the office to be established by the company at Penzance and an office to be established by the company at Liverpool.

(4.) A telegraph wire between the office to be established by the company in London and the office to be established by the company at Liverpool.

11. The Postmaster-General shall also with all convenient speed provide, and shall thenceforth during the continuance of this agreement keep appropriated and maintain and work for the exclusive use of the company a pneumatic tube connecting the central telegraph office of the Postmaster-General in London with the offices of the company at No. 24 Royal Exchange, London.

12. The Postmaster-General shall also with all convenient speed provide, and shall thenceforth during the continuance of this agreement keep appropriated, maintain, and work for the exclusive use of the company in connection with the said two special wires, two instruments called translators, and the necessary batteries in connection therewith, at the head post-office at Bristol or at such other postal telegraph office as may be selected by the Postmaster-General; and the said translators shall be such as can conveniently be worked in connection with the instrument known as the "Morse apparatus," with polarized relay and a single or double current key.

13. The special wires, pneumatic tube, and translators and batteries for the time being appropriated to the use of the company as aforesaid shall remain and be the property of the Postmaster-General.

14. Except as aforesaid, the company shall provide and maintain their own instruments and batteries, and shall work the special wires for the time being at their own cost.

15. The company shall not in working either of the special wires passing through Bristol use any instrument which, in the opinion of the Postmaster-General or any of his officers, cannot

4. On or about the 25th of January, 1881, the appellants entered into a supplemental agreement with the Postmaster-General relative to the above matters.

conveniently be used in connection with the said translators; and the company shall not in working the special wires to be provided and appropriated as aforesaid, or any of them, use any instrument, battery, or materials which, in the opinion of the Postmaster-General or any of his officers, shall or may injure or be likely to injure any part of the said wires; and the company shall within twenty-fours after notice in writing shall have been sent to their principal office for the time being in London by or on behalf of the Postmaster-General, or any of his officers, that any instruments used by the company cannot be conveniently used in connection with the said translators, or that any instrument, battery, or materials used by the company is or are injurious or likely to be injurious to any of the special wires, discontinue the use of the instruments, batteries, and materials specified in such notice; and the company shall permit the Postmaster-General, by his engineers, electricians, or any other officer or officers who may be appointed by him for that purpose, to inspect from time to time, with or without notice, the instruments, batteries, and materials used or intended to be used by the company in the working of the special wires or any of them.

16. The Postmaster-General shall incur no liability to the company by reason of any accidental defects or interruptions to the working of any of the special wires or of the translators or batteries for the time being appropriated to the use of the company, but will repair with all convenient speed any such accidental defects or interruptions.

17. Notwithstanding the stipulations hereinbefore contained, the Postmaster-General shall not be liable to make good any damage to any of the said special wires which any of the officers of the Postmaster-General for the time being in charge of their maintenance respectively shall certify to have been occasioned by the act, neglect, or default of the company or their servants or agents: and, if the Postmaster-General shall make good any such damage, as aforesaid, the company shall on demand pay to him the costs of so doing; and the certificate of any such officer as aforesaid shall be conclusive as to the amount of such costs.

18. The company shall not use any of the said special wires for the transmission of any messages except American messages and service messages of the company.

19. In consideration of the appropriation and maintenance by the Postmaster-General for the use of the company of the special wires, the company shall during the continuance of this agreement pay to the Postmaster-General in respect of each special wire a yearly rent or sum calculated at the rate of 5*l.* for every mile of the length of such special wire, and at the like rate for any fraction of a mile of such length.

20. In consideration of the appropriation and maintenance by the Postmaster-General for the use of the company of the said pneumatic tube, the company shall during the continuance of this agreement pay to the Postmaster-General in respect thereof the yearly rent or sum of 350*l.*

21. In consideration of the appropriation, maintenance, and working by the Postmaster-General to the use and on behalf of the company of the said translators and batteries, the company shall during the continuance of this agreement pay to the Postmaster-General the yearly rent or sum of 350*l.*

24. The special wires, the Déolin cable, and the American cable, shall, whilst worked by the Paris and New York Company, be open for the messages of all persons alike without favour or preference.

34. The company shall not part with the possession of the special wires or any of them without the consent of the Postmaster-General under his seal; and the company shall not without the like consent assign, dispose of, or underlet the benefit of the agreements and stipulations between the Postmaster-General and the company contained in these presents or any of them, or any part thereof.

41. Provided that, in case the company shall, without the consent of the Postmaster-General and the submarine companies under their respective seals, part with the possession of the Déolin cable, or of the special wires, or any of them, or shall without such consent as aforesaid assign, dispose of, or underlet the benefit of the agreements and stipulations herein contained, or any of them, or any part thereof, or in case any sum of money which shall be payable by the company to the Postmaster-General or to the submarine companies under or by virtue of these presents, shall be in arrear and unpaid for two calendar months after the same ought to have been paid, or in case the company shall use the Déolin cable or the special wires, or any of them, for the transmission of any message not being a service message or a message which has been or is intended to be transmitted from or to America by means of the American cable, or in case the company shall not commence the business of transmitting messages between France and America within six calendar months after the date of these presents, or, having commenced such business, shall afterwards cease for a period of twelve calendar months to carry on the same, then and in any such case it shall be lawful for the Postmaster-General and the submarine companies at any time thereafter, by notice in writing under their respective seals, to determine these presents, and the rights and obligations hereby created, as from the date of the service of such notice at the office or last-known office of the company in London.

43. Upon the expiration or determination by any means of these presents and the rights and

[A copy of this agreement accompanied and was to form part of this case.]

5. Under and in pursuance of such agreements the appellants have the use, as therein provided, of two telegraphic wires, which are the property of the Postmaster-General. These wires are supported upon poles in the ordinary way, and extend from Penzance in Cornwall to the landing-place of the aforesaid telegraphic cable near Land's End.

6. During a portion of their course the said wires pass through the parish of St. Buryan in the Penzance Union in the county of Cornwall; and the respondents, the assessment committee, having jurisdiction over such parish, in drawing up their supplemental valuation list, included the appellants as persons liable to be rated to the relief of the poor of such parish in respect of an alleged occupation by them of the said telegraphic wires and poles situated in such parish; and, in accordance with such valuation list, the appellants were on the 5th of October, 1881, rated to the relief of the poor in the said parish in the sum of 16*s*. The following is a copy of such rate:—

No.	Name of occupier	Name of owner	Description of property rated	Name or situation of property	Gross estimated rental	Probable value	Rate at 1*s*. in pound
					£ *s*. *d*.	£ *s*. *d*.	£ *s*. *d*.
12	French Telegraphic Company	—	Telegraph poles and wires	Parish throughout	20 0 0	16 0 0	0 16 0
13							

10. The appellants have no further or other interest in the said telegraph wires and poles than such as is given to them by the provisions of the agreements above referred to.

The question for the opinion of the Court was whether the appellants are liable to be rated in respect of the said telegraphic poles and wires, or either of them.

Addenda, by consent, to the Special Case:—

The special wires kept, appropriated, and maintained for the exclusive use of the appellants under the said agreements are supported on poles or otherwise fixed in precisely the same manner as other telegraph wires. During the whole of their course between Penzance and London the special wires above referred to are supported on the same poles as other wires belonging to the Postmaster-General and used by him for general telegraphic purposes.

The Postmaster-General has not, up to the present time, established any telegraphic station at the landing-place of the Déolin cable (a distance of nine miles from Penzance), nor any such station along this route of the separate wires between those two places.

All the wires of the Postmaster-General from Penzance which go in the same direction as the special wires to Déolin, are supported on the same poles as such special wires for about a quarter of a mile. They then (with the exception of the two which go to Newlyn) branch off in directions differing from that of the special wires. The two wires to Newlyn continue to be supported on the same posts as the said special wires for a further distance of a mile and a quarter, and then branch off.

Meadows White, Q.C. (*Moulton* with him), for the appellants.

Arthur Charles, Q.C. (*E. Bullen* with him), for the respondents.

The following authorities were referred

obligations hereby created, it shall be lawful for the Postmaster-General to resume the possession of the said special wires and each of them, and for the submarine companies to take possession of the Déolin cable, free from any right or interest of the Paris and New York Company therein respectively; but subject, as to the said cable, to the provisions of any agreement or agreements that may be then subsisting between the Postmaster-General and the submarine companies in relation thereto.

to :—*Allan* v. *The Overseers of Liverpool* (2), *The Queen* v. *Smith* (3), *The Midland Railway Company* v. *The Overseers of Badgworth* (4), *The Electric Telegraph Company* v. *The Overseers of Salford* (5), *The Queen* v. *St. Pancras* (6), and *The London and North Western Railway Company* v. *Buckmaster* (7).

March 8.—CAVE, J.—The question in this case is whether the appellants by the terms of an indenture of the 14th of April, 1880, are in the exclusive occupation of certain telegraph wires so as to be rateable to the poor rate of the parish of St. Buryan in respect thereof, or whether they have only the enjoyment of the wires without any actual occupation hereof.

It does not appear distinctly from the case or the addenda whether the Postmaster-General has any wires in the parish of St. Buryan except the special wires; but it is stated that during the whole of their course between Penzance and London the special wires are supported on the same poles as other wires belonging to the Postmaster-General. There is nothing in the agreement to prevent the Postmaster-General from attaching other wires to the telegraph posts throughout the parish of St. Buryan; and our judgment cannot turn upon the fact, if it be so, that none other but the special wires are supported by the telegraph posts in the parish in question.

Telegraph posts and wires have been held to be rateable—*The Electric Telegraph Company* v. *Salford* (5); and, from the report of that case, it appears to have been the unanimous conclusion of the Judges of the Exchequer that the wires as well as the posts are rateable. By that judgment we are bound, and the only remaining question is whether the appellants have an exclusive occupation of the wires.

(2) 43 Law J. Rep. M.C. 69; Law Rep. 9 Q.B. 180.
(3) 3 E. & E. 383; 30 Law J. Rep. M.C. 74.
(4) 34 Law J. Rep. M.C. 25.
(5) 11 Exch. Rep. 181; 24 Law J. Rep. M.C. 146.
(6) 46 Law J. Rep. M.C. 242; Law Rep. 2 Q.B. D. 581.
(7) 44 Law J. Rep. M.C. 180; Law Rep. 10 Q.B. 444.

The indenture recites that it has been agreed that the Postmaster-General shall appropriate for the use of the appellant company certain special wires. In the operative part there is no demise in terms; but the Postmaster-General covenants that he will with all convenient speed provide, and thenceforth during the continuance of the agreement keep, appropriate, and maintain for the exclusive use of the company a telegraph wire between the landing-place of the Déolin cable near the Land's End, and an office to be established by the company at Penzance, and also a telegraph wire between the office at Penzance and an office to be established by the company in London. The Postmaster-General also covenants that he will with all convenient speed provide, and thenceforth during the continuance of the agreement keep, appropriate, and maintain for the exclusive use of the company a pneumatic tube connecting the central telegraph office of the Postmaster-General in London with the offices of the company in that city; and, further, that he will with all convenient speed provide, and thenceforth during the continuance of the agreement keep, appropriate, maintain, and work for the exclusive use of the company, in connection with the special wires, two translators and the necessary batteries in connection therewith at the head post office at Bristol. By the 13th clause of the agreement the special wires, pneumatic tube translators, and batteries, for the time being appropriated to the use of the company, are to remain and be the property of the Postmaster-General.

Pausing here for a moment, I would remark, first, that the Postmaster-General does not covenant to appropriate any definite wire to the use of the company, and that, if there were a dozen wires suspended from the telegraph posts, it is left entirely to the Postmaster-General to decide which he would appropriate to the use of the company, and that he may change the wire as he thinks fit. Secondly, that there are no words used in this part of the agreement which import that the company is to have possession of the wire. Thirdly, that the words "shall keep, appropriate, and maintain" rather point to a retention of

possession by the Postmaster-General; and, fourthly, that the same words, with the addition of the words "and work," are used with reference to the translators, of which the Postmaster-General is obviously to retain possession, as are used with reference to the wires and the pneumatic tube.

By clause 14 the company are to provide and maintain their own instruments and batteries, and to work the special wires for the time being at their own cost. By clause 15 the company are not, in working the special wires, to use any instrument, &c., which shall or may injure or be likely to injure the wires; and they are to permit the Postmaster-General to inspect from time to time the instruments, &c., used or intended to be used in the working of the special wires. By clause 16 the Postmaster-General is to incur no liability to the company by reason of any accidental defects or interruptions to the working of any of the special wires or of the translators or batteries for the time being appropriated to the use of the company; but is to repair with all convenient speed any such accidental defects or interruptions. By clause 17 the Postmaster-General is not to be liable to make good any damage to the special wires which any of the officers of the Postmaster-General for the time being in charge of their maintenance respectively shall certify to have been occasioned by the act, neglect, or default of the company or their servants; and, if the Postmaster-General shall make good any such damage, the company shall on demand pay to him the costs of so doing. By clause 18 the company are not to use any of the wires for transmission of any messages except American messages and service messages of the company.

Pausing here again, I fail to see in any of these stipulations anything to lead me to conclude that the company are to be the exclusive occupiers of the wires. The clause empowering the Postmaster-General to inspect the company's instruments, but not to inspect the wires, rather points to the conclusion that the wires are regarded as being still in the possession of the Postmaster-General; and so does clause 17, which does not give the Postmaster-General power to enter and make good damage done by the company, but simply provides that, if he makes good any such damage (assuming apparently that he has a right to do it), the company will pay the costs of so doing.

Clause 19, which provides for a rent to be paid by the company in respect of such special wire, in consideration of the appropriation and maintenance of the wires for the use of the company, would favour the contention of the respondents were it not that precisely similar language is used in clause 20 in respect of the pneumatic tube, and in clause 21 in respect of the translators and batteries. There are, however, two clauses, the 34th and the 43rd, which to my mind create some difficulty, and I am not sure that I understand them. Clause 34 provides that the company shall not part with the possession of the special wires without the consent of the Postmaster-General. Clause 41 provides that if they do so the Postmaster-General may determine the agreement; and clause 43 provides that on the expiration or determination of the agreement the Postmaster-General may resume the possession of the wires. I find no similar provisions with respect to the pneumatic tube; and I have come to the conclusion that these words refer not to the wires as the subject of physical occupation, but to the control over the use of the wires which the company obtain by reason of the wires being in communication with the instruments in their offices at Penzance, London, and Liverpool.

The Postmaster-General is the owner of the posts and of all the wires. He is admittedly to retain possession of the posts. He is to provide special wires (not definite wires, but any wires he may from time to time deem suitable) for the use of the company, and he is to keep these wires appropriated to such use and maintain them during the agreement, by his officers, who are to be in charge of their maintenance. The company, on the other hand, are to have the exclusive use of the wires, but they are not to work them with any instrument, &c., they please, but only with such as in the opinion of the Postmaster-General will not injure the wires; nor are they to use the wires except for the transmission of American messages and service

messages; and they are to keep them open for the messages of all persons alike without favour or preference.

Suppose a stranger injured the wires in some way that did not interfere with their power of transmitting messages, as, for instance, by painting them or affixing advertisements to them, could the company bring an action? I think not. Suppose some way of utilising the wires were discovered which would produce a profit also without interfering with their power of transmitting messages, to whom would the right of so using the wires belong? Surely to the Postmaster-General, and not to the company. But, if these things are so, the Postmaster-General is the occupier, and not the company.

On the whole, I have come to the conclusion that the Postmaster-General, and not the company, occupies the rateable subjects, and that the company have only an exclusive enjoyment, without occupation. The case seems to me to resemble most the case of a lodging-house keeper who agrees that a particular lodger shall have the exclusive use of a bedroom, and stipulates that if the rent is not duly paid the lodger shall give up and the lodging-house keeper may resume possession of the bedroom. I apprehend that in that case no one could suggest that the lodger was rateable, more especially if, as is the case here, the selection of the particular bedroom were to be left to the keeper of the lodging-house; and I therefore think our judgment should be for the appellants.

LORD COLERIDGE, C.J.—It has often been said that questions of construction are amongst the most difficult, and those upon which persons are most liable to differ. I confess that if I had written the judgment in this case I should have commenced at the opposite end of the agreement, and endeavoured, from the clear language of the 41st and 43rd clauses, to explain the more difficult provisions of the instrument. I fail to see how the Postmaster-General is to resume possession of the special wires, unless he had conveyed to the telegraph company the exclusive possession of those wires. I acknowledge, however, the force and reasoning of my brother Cave's judgment, and I do not feel sufficient confidence in my own opinion to justify me in differing from it, although I rather incline to the opposite conclusion.

Judgment for the appellants; leave to appeal granted.

Solicitors — John Mackrell, Maton & Co., for appellants; Dangerfield & Blythe, agents for J. Crosby, Penzance, for respondents.

1884. July 2, 3. THE LANCASHIRE AND CHESHIRE TELEPHONE EXCHANGE COMPANY (LIMITED) *v.* THE OVERSEERS OF THE TOWNSHIP OF MANCHESTER.

Poor — Rate — Telephone Company — Rateability of Wires—Occupation—Licence.

The appellants, a telephone company, laid down for the purposes of their business, in the respondents' township, overhead wires supported either by poles fixed in the ground or by attachments to the roofs, chimneys, or walls of some of the buildings, which attachments were easily removable without damage being done to the buildings. The consent of the owners or occupiers of land into which poles were fixed or buildings to which attachments were made was in all cases given by printed agreement, called wayleaves, under which the appellants undertook to pay a small annual acknowledgment and to remove the wires, poles, or other attachments within a certain time upon a receipt by them of notice to do so by such owners or occupiers:—Held, *that the appellants were the exclusive occupiers of the posts and other attachments and supports for wires as well as of the wires thereto attached, and were accordingly liable to be assessed to the poor rate in respect of one entire system.*

Special Case stated by consent for the opinion of the Court under 12 & 13 Vict. c. 45. s. 11, pursuant to the order of Denman, J.

The appellants are a company incorporated for the purposes of establishing tele-

phonic exchanges and communications in Lancashire and Cheshire, their principal office being at 38 Faulkner Street, Manchester.

The respondents are the overseers of the poor of the township of Manchester.

In a rate or assessment for the relief of the poor made by the respondents on the 22nd of June, 1883, the appellants were inserted as occupiers of land, telephone posts, and wires in the said township, and rated in respect of such occupation.

In the said rate the appellants were rated in respect of the whole of the telephone posts, standards, or other supports or attachments for wires hereinafter mentioned, and all the wires thereto attached, taken as one entire system.

The business carried on by the appellants within the township of Manchester is (so far as relates to this case) of two kinds:—

(1) The establishment and maintenance of a telephonic exchange by means of which any one subscriber to the exchange can communicate privately by telephone with any other subscriber.

(2) The supply and erection generally of wires and telephonic apparatus (not in connection with the telephonic exchange) for the private use of firms and individuals paying a rent for the same.

For the purposes of each class of their business the appellants have from time to time laid wires within the respondents' township; such wires were overhead wires, and were carried up through the roof of the appellants' central office, thence over buildings, streets, yards, and plots of land not built on in the respondents' township, to the respective premises of the appellants' subscribers.

The wires so carried overhead are supported and steadied, either by poles fixed in the ground, or more generally by being attached to the roofs, chimneys, or walls of some of the buildings over which they passed. Such attachments can be removed easily without damage to the buildings, and as a matter of fact the appellants do from time to time change from one form and point of attachment to another on any given building as the occupiers thereof or the exigencies of the appellants' business may require.

The consent of the owners or occupiers of land into which poles are fixed or buildings to which attachments are made has in all cases been given in agreements, mostly in printed forms, known as wayleaves, under which the appellants agreed to pay a small annual sum, to make good any damage caused in the erection of the wires, upon posts or otherwise, and to remove the line of wires with posts, &c., after six months' notice in writing.

The majority of the buildings to which the attachments have been made are several stories high, some of them warehouses of five or six stories, and the appellants obtain access to the roof by ascending through the interior of the buildings, permission being in all cases first obtained from the owners or occupiers. The outer doors of the various buildings are locked and fastened except in the usual business hours, and the appellants' servants are then quite unable to get into or on to the buildings from the interior, as they are in no single instance furnished with a key of the outside door of the building, or any other way of obtaining admittance thereto. Similarly the practice of the appellants when wishing to have access to the poles fixed in the ground is to obtain permission from the owners or occupiers.

The questions for the opinion of the Court were: 1. Are the appellants' telephone posts, standard ridge saddles, and other attachments and supports for wires, and the wires thereto attached, or any and which of them, rateable to the poor; and, if so, who is liable for the rate? 2. If the telephone posts, and the attachments and supports for wires, and the wires thereunto attached, or any of them, are rateable, do they or any of them constitute a separate rateable tenement, or do they add to the rateable value of the premises respectively to which they are attached? 3. If the appellants are rateable to the poor in respect of any land telephone posts and wires in the respondents' township, how is the proper amount at which they ought to be assessed to be ascertained?

Webster, Q.C. (*Henn Collins, Q.C.* with him), for the appellants.—The appellants are not rateable. The mere fact that these wires are attached to the houses by permission of their owners does not

make them rateable hereditaments. The wires in question can be removed at any time at the wish of the owners, who did not demise, but only granted a licence or privilege, and such licence or privilege is not rateable.—See *Smith* v. *The Lambeth Assessment Committee* (1) and *Watkins* v. *The Overseers of Milton-next-Gravesend* (2). In *The Electric Telegraph Company* v. *The Overseers of Salford* (3) it was no doubt held that a liberty to place posts on the land of another person was rateable; in that case, however, there was an occupation of land by means of the post; and it certainly did not decide that an easement can be rated.—He also cited *Grant* v. *The Oxford Local Board* (4) and *Cory* v. *Bristow* (5).

Ambrose, Q.C. (*Smyley* with him), appeared for the respondents, but was stopped by the Court.

MATHEW, J.—We do not think that the third question is one which we ought to advise upon; we therefore decline to answer it.

As to the first and second questions the case, in our judgment, is governed by the decision in *The Electric Telegraph Company* v. *The Overseers of Salford* (3). The question in that case was whether a liberty to place posts on the land of another person was an occupation of land capable of being rated under 43 Eliz. c. 2. s. 1, and it was held that it was. That case is really undistinguishable, for here it is sought to assess a whole system of wires used for a purpose analogous to which the wires were used in the Salford case. It has been argued by Mr. Webster that there was no permanent occupation, but that such occupation as existed was enjoyed by virtue of a *quasi* easement by licence; but, in our judgment, there was an exclusive occupation, limited in character I admit, but exclusive in each case as distinguished from a mere user by licence. When a wire is attached to a roof, that part of the roof where the wire is attached is used exclusively for the purpose of the support, just as where the wire is upon a post, the post and land in which it is fixed are used exclusively for supporting that wire. The use is not merely temporary, but exclusive and permanent. The case of *Watkins* v. *The Overseers of Milton-next-Gravesend* (2) is distinguishable, the *ratio decidendi* in that case being that the owner was the real occupier, a distinction being drawn between the owner and the person who had a mere licence to use. In *Smith* v. *The Lambeth Assessment Committee* (1) it was decided that there was no legal right to exclusive occupation, and on that ground the occupation was held not to be rateable. Here, as it seems to me, there was both an exclusive occupation, and a permanent user with which it was not intended that the owners or tenants of the houses should have power to interfere. It has been said that the only right of user was by wayleaves; but the question is not so much as to the contents of the documents as to what is going on under them, and the conclusion I have come to is that what is going on under these documents is that there is an exclusive occupation of an entire system for the purpose of conveying telephonic messages, and that our judgment ought to be in favour of the respondents.

DAY, J.—I concur.

Judgment for respondents.

Solicitors—Pritchard, Englefield & Co., agents for Grundy, Kershaw & Co., Manchester, for appellants; Johnson & Weatheralls, agents for A. Lings, Manchester, for respondents.

(1) *Ante*, p. 1; Law Rep. 9 Q.B. D. 585.
(2) 37 Law J. Rep. M.C. 73; Law Rep. 3 Q.B. 350.
(3) 11 Exch. Rep. 181; 24 Law J. Rep. M.C. 146.
(4) 38 Law J. Rep. M.C. 39; Law Rep. 4 Q.B. 9.
(5) 46 Law J. Rep. M.C. 273; Law Rep. 2 App. Cas. 262.

1884. March 25. THE MAYOR ETC. OF OVER DARWEN *v.* THE JUSTICES OF LANCASTER.

Highway—Main Road—Repair—Costs of Maintenance—Contribution—"County authority of the County in which such Road is situated"—Highway Act, 1862 (25 & 26 *Vict. c.* 61), *s.* 2—*Highways (Amendment) Act*, 1878 (41 & 42 *Vict. c.* 77), *ss.* 13 *and* 38.

By the Highways (Amendment) Act, 1878, *s.* 13, *half the cost of maintenance of a road that has ceased to be a turnpike road is to be paid "by the county authority of the county in which such road is situate"; and "county" in that Act is declared to have the same meaning as it has in the Highway Act*, 1862 (25 & 26 *Vict. c.* 61), *s.* 2, *which provides that for the purposes of that Act "all liberties and franchises except boroughs shall be considered as forming part of the county by which they are surrounded." The highway authority of the borough of Over Darwen in Lancashire claimed contribution in respect of the maintenance of part of a road in the borough that had ceased to be a turnpike road from the county authority of the county of Lancashire:*—Held, *that the word "county" in the Highways (Amendment) Act*, 1878 (41 & 42 *Vict. c.* 77), *s.* 13, *is a geographical term; and the county authority of Lancashire, by which the road in question is surrounded, is liable to contribute as "the county authority of the county in which such road is uate."*

From this Special Case it appeared that—

The plaintiffs were the mayor, aldermen, and burgesses of the borough of Over Darwen in the county of Lancaster, and also the highway authority of the borough, which was a highway area within the meaning of the Highways and Locomotives (Amendment) Act, 1878.

The defendants were the Justices of the peace for the county of Lancaster, and when assembled in annual general session, pursuant to the provisions of 38 Geo. 3. c. 58, were the county authority as defined by the Highways and Locomotives (Amendment) Act, 1878; and as such, when so assembled, declared, by order, on the 26th of December, 1878, that the contributions towards the expenses incurred in repairing the main roads within the hundred of Blackburn should be paid out of a separate rate to be raised and charged upon the said hundred of Blackburn.

The Bolton and Blackburn turnpike road was constructed by turnpike trustees under an Act passed in the eleventh year of the reign of Geo. 4, which was renewed in 1862 by a further Act. This road passed through the borough of Over Darwen, but on the 20th of July, 1877, had ceased to be a turnpike road, and in 1878, by 41 & 42 Vict. c. 77. s. 13 (1), had become a main road. The corporation therefore, as such highway authority, demanded from the Justices, under 41 & 42 Vict. c. 77. s. 13 (1), payment of one half of the expenses incurred by them for the year ending the 25th of March, 1883, for the maintenance of so much of the Bolton and Blackburn main road as is situate within the said borough. The amount of such expenses was 371*l.* 6*s.* 11*d.*, and the highway authority demanded 185*l.* 13*s.* 6*d.* The Justices refused to pay.

The question submitted to the Court was—

Whether the county authority, under the circumstances above stated, was liable, by virtue of the Highways and Locomotives Act, 1878, or otherwise, to pay out of the

(1) 41 & 42 Vict. c. 77. s. 13: "For the purposes of this Act, and subject to its provisions, any road which has within the period between the thirty-first day of December, one thousand eight hundred and seventy, and the date of the passing of this Act, ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road: and one half of the expenses incurred from and after the twenty-ninth day of September, one thousand eight hundred and seventy-eight, by the highway authority in the maintenance of such road, shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situate out of the county rate. . . ."

Section 38: "In this Act 'county' has the same meaning as it has in the Highway Acts, 1862 and 1864. . . ."

county rate the sum demanded or any part thereof.

R. Henn Collins, Q.C., for the plaintiffs. —The defendants are the county authority, and as such are liable to pay the half of the cost of maintenance of a road that has ceased to be a turnpike road and become a main road—41 & 42 Vict. c. 77. s. 13 (1).

Gorst, Q.C. (with him *Blair*).—It is admitted that *prima facie* the defendants, as the county authority, would be liable to contribute to the repair of the road which is in Over Darwen in the county of Lancashire; but the word "county" must be read as having the meaning given to it by the interpretation clause of the Highways and Locomotives (Amendment) Act, 1878 (1), and therefore it is not to be taken as a geographical county, but with the meaning given to that word in the Highways Act, 1862 (25 & 26 Vict. c. 61), s. 2 (2). By that section boroughs are not to be deemed parts of the counties surrounding them. By 41 & 42 Vict. c. 77. s. 26, power to make by-laws is given to the county authority. If Over Darwen is to be considered to be in the county, there might be two sets of by-laws—one by the county authority and one by the corporation, which might clash.

Henn Collins, Q.C., in reply.—If the defendants are right, boroughs would contribute to the county expenses, and yet get nothing in return. But the Act intended to give contributing boroughs a right to some return from the county, and exclude the non-contributing boroughs from such right. The fact of Over Darwen being a borough is immaterial—see Lord Blackburn's judgment in *The Justices of Lancashire* v. *The Mayor &c. of Rochdale* (3); and the decision in the later case, *The Justices of West Riding* v. *The Queen* (4), was expressly declared not to militate against that of *The Justices of Lancashire* v. *The Mayor &c. of Rochdale* (3).

DAY, J.—Upon the best construction I can put upon these several statutes, it seems to me that the plaintiffs are entitled to our judgment. Their claim is based upon the 13th section of the Act of 1878; they are undoubtedly a highway authority of a highway area within the meaning of the Act. The defendants are the county authority of the county Lancashire, and the plaintiffs contend that the defendants are also, not only the county authority of the county Lancashire, in which county, geographically considered, the borough of Over Darwen and the highway area of Over Darwen is situated, but the "county authority" of the statutory county in which such road is situated. Now, "county" is interpreted by the 38th section in this way: "county has the same meaning as it has in the Highway Acts, 1862 and 1864." In the statute of 1862 I find these words, which I have to try and construe, and ascertain what is meant by their use: "The word 'county' in this Act shall not include a 'county of a city,' or a 'county of a town.'" The definition, so far as it is a definition, mentions some things which it shall not mean, it does not say what it shall mean in any positive language;—"but where a county as hereinbefore defined is divided into ridings or other divisions, having a separate court of quarter sessions of the peace, it shall mean each such division or riding, and not the entire county." Then it goes on to say—"and for the purposes of this Act all liberties and franchises, except the liberty of St. Albans, which shall be considered a county, and except boroughs as hereinafter defined." Boroughs, so far as this section, read naturally, goes, are excepted from a class of things which are previously spoken of as liberties and franchises. With that sole exception, all liberties and franchises, except boroughs, "shall be considered as forming part of that county by which they are surrounded; or, if partly surrounded by two or more counties, then as forming part of that county with which they have the largest common boundary."

I will assume in favour of the defendants and for the purpose of my judgment

(2) 25 & 26 Vict. c. 61. s. 2: "... for the purposes of this Act all liberties and franchises except the liberty of St. Albans, which shall be considered a county, and except boroughs as hereinafter defined, shall be considered as forming part of that county by which they are surrounded. ..."

(3) *Ante*, p. 5; Law Rep. 8 App. Cas. 494, at p. 496.

(4) *Ante*, p. 41; Law Rep. 8 App. Cas. 781, at p. 797.

to-day that what is meant by this Act of Parliament is that boroughs are not to be deemed parts of counties for the purposes of that Act.

Assuming, then, that to be the meaning of the Legislature, and that to be what it is to be taken to have expressed, what effect has such enactment upon this case? Does it enact that wherever in the Act of Parliament the word "county" is used, one is nevertheless to eliminate all boroughs geographically within the county, although the term "borough" is used merely by way of description? Is it necessarily to be inferred that all boroughs are to be considered as taken out of their counties? It seems to me it is not necessary to put so large a meaning upon the enactment. It seems to me that the use of the word "county" as a geographical expression may still remain. Where enactments are made affecting counties, those enactments are not to affect boroughs, no doubt; but it seems to me that the word "county" may still have, where it is necessary it should have, its ordinary geographical meaning—that is to say, although for the purposes of the Act, for the purposes of limiting the enactments contained in the Act, boroughs are not to be considered as affected where a county only is spoken of, still, if a borough is spoken of as being within a county, one may still assume the word "county" in such case to be used in a geographical sense, because it is difficult to see how a borough can be in a county except in the ordinary geographical sense. The definition here is that the word "county" in this Act shall not include "boroughs": boroughs are not to be considered as forming part of that county. It does not say that boroughs shall not still remain within the limits of a county; all it says is that boroughs shall not be considered as part of a county for the purpose of the enactments contained in the Act: although not to be considered as part of the county for legislative purposes, it does not say that the borough shall not remain where it found itself before the Act—that is to say, within the geographical limits of the county—Lancashire, in this instance.

Reading it in that way, I find in the 13th section of the Act of 1878 this—"be paid to the highway authority of such area by the county authority." To see what the county authority is you must look at the definition clause. The county authority of what? Of what county? Why, of the county in which the road is situate. The only county in which the road can be deemed to be situate seems to me to be the geographical county—the county Lancashire. This is the best construction I can put upon this enactment. I think one can reconcile the Acts with probably what is the intention of the Legislature by saying that although a borough is not to be deemed a part of a county for the purpose of the Highway Act, 1862, still it does not cease to be situate within the county. It is within the county: it is within the geographical ambit of the county: therefore, although not part of the county, it is still within the county—and so also is the road situate within the county—the county Lancashire. This seems to me to reconcile all the difficulties which have been raised on one side and the other.

Looking to the 14th section and to the definition of "urban sanitary district," I find that where a borough has a Court of quarter sessions, and does not contribute to the county burthens, there it would not be a highway area; and, not being a highway area, it would not have the benefit secured to highway areas under section 13, which would be reasonable. Where a borough does not contribute to the public burthens, not being a highway area, it would not be at liberty to recover from the county any portion of the cost of repairing the main roads within its limits; that is reasonable and intelligible. It does not contribute to the general burthen: it is not entitled to draw upon the county authority, as it does not contribute to the county fund.

On the other hand it would be very unreasonable that a borough that does contribute to the county fund, that does contribute to the maintenance of the roads throughout the county, should not have the benefit of getting from the county contributions towards the support of the main road which passes within its limits. One thus gets a reasonable apportionment of burthen: one makes a reasonable application of this section 13: and it seems that

one does it by putting a reasonable construction upon, not only the Act of 1878, but also upon section 2 of the Act of 1862.

In this view of the case I think our judgment should be in favour of the plaintiffs.

SMITH, J.—This is an action brought by the Corporation of Over Darwen, being a highway authority, to recover expenses incurred, amounting to 185*l.* 13*s.* 6*d.*, from the county authority, and they make the claim under the 13th section of 41 & 42 Vict. c. 77. The sole point is this: The defendants say that within the meaning of that section, although they are a county authority, they are not the county authority of the county in which such road is situate within the meaning of section 13. It seems that in the case of *The Queen* v. *The Mayor &c. of Rochdale* (3) this point was for the first time taken when it got into the House of Lords. Upon the point being taken there, three of the learned Lords seem to have discarded it, because they said nothing about it; and although Lord Blackburn said something, it does not seem to me he thought much of it.

I cannot see that the case is an authority, for they certainly did not decide the point in favour of the defendants. The next case, that came on a few months afterwards, was the case of *The Queen* v. *The Mayor &c. of Sheffield.* There this point would have been decisive of the case, but the learned counsel did not take it at all. I should only like to say that I wish they had. As a Court of first instance, therefore, unfettered by authority, we are now to determine what is the true meaning of the 13th section.

This section is perfectly clear if one were not hampered by the interpretation clause in the 38th section. I do not know whether I am right, but this is the view which strikes me as being correct: Section 38 says "county" has the same meaning as it has in the Highway Act, 1862. Then may not this be the true construction when you look to section 2 of the Act of 1862 and see what meaning "county" therein has? It seems to me it can be read in this way: The word "county" in this Act shall not include "county of a city" or a "county of a town," but where a county as hereinbefore defined—that is, not including a county of a city or a county of a town—"is divided into ridings or other divisions, having a separate court of quarter sessions of the peace, it shall mean each such division or riding, and not the entire county." Now may not one pause there, and say that is the meaning which is attached by the Act of 1862 to the word "county" down to there? Then the section goes on further—"and for the purposes of this Act all liberties and franchises, except the liberty of St. Albans, which shall be considered a county, and except boroughs as hereinafter defined, shall be considered as forming part of that county by which they are surrounded." Therefore, reading in section 2 down to the words "and not the entire county," that is the meaning which the Act of 1862 gives to the word "county," and all the rest is simply as to what is to be done as regards the "purposes" of this Act. I do not know whether that is right or not; it seems to me it is capable of that reading. At any rate, whether that is right or wrong, I agree with the observations that have fallen from my brother Day, and I think you must read this as being within the geographical ambit of the county, because who are to be the paymasters? They are to be the county authority, and the county authority are to be Justices of a county in general or quarter sessions assembled. Therefore the paymasters are to be the Justices of Lancashire of the whole county. I do not think that the piece of road within the borough is excepted by reason of the 2nd section of the Act of 1862. I think, therefore, our judgment must be for the plaintiffs.

Judgment for plaintiffs.

Solicitors—Pritchard, Englefield & Co., agents for C. Costeker, Darwen, for plaintiffs; Ridsdale & Son, agents for Wilson & Hulton, Preston, for defendants.

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Evidence (continued)—

in her husband's hearing, "This is the list of what we bought and what we gave for them":—*Held*, that the list was admissible against the prisoner on his trial for receiving the goods. *Reg.* v. *Mallory* (C.C.R.), 134

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—— *receiving stolen goods: guilty knowledge: the possession of other stolen property: the prevention of crimes act*, 1871 (34 & 35 *Vict. c.* 112), *s.* 19]—By 34 & 35 Vict. c. 112. s. 19, it is enacted that—"Where proceedings are taken against any person for having received goods knowing them to have been stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of proceedings taken against him":—*Held*, that, in order to shew guilty knowledge under that section, it must be proved that such "other property" was found in the possession of the prisoner at the time when he is found in the possession of the property which is the subject of the indictment. *Reg.* v. *Carter* (C.C.R.), 96

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—— (33 & 34 *Vict. c.* 52), *s.* 26: *fugitive criminal: crime committed in foreign country by person "in Her Majesty's dominions"*]—N., being in Southampton, wrote and sent certain letters containing alleged false pretences to certain persons carrying on business within the jurisdiction of the German empire, thereby inducing them to part with certain goods and deliver them to his order to certain persons in Hamburg. N. also sent to the same persons certain alleged forged cheques in payment:—*Held*, on argument of a rule *nisi* for a *habeas corpus*, that N. was a fugitive criminal within the Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 26, and was rightly committed by the police magistrate to await the warrant of the Secretary of State for his extradition. *Reg.* v. *Nillins*, 157

False Pretences —*venue: jurisdiction*]—The prisoner, at N., in England, wrote and posted a letter to the prosecutor at a place out of England. The letter contained a false pretence, by means of which the prisoner induced the prosecutor to transmit to N. a draft for 150*l.*, which he there cashed:—*Held*, that as the false pretence was made at N., where also the money obtained by means of it was received, there was jurisdiction to try the prisoner at N. *Reg.* v. *Holmes* (C.C.R.), 37

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Fugitive Criminal. See EXTRADITION ACT.

Gaming—*common gaming house:* 17 & 18 *Vict. c.* 38. *s.* 4: *unlawful gaming*]—Upon an information for the offence of unlawful gaming laid under section 4 of 17 & 18 Vict. c. 38, Jenks, the proprietor of the Park Club and occupier of the club premises, was convicted of the offence as "a person who kept and used the house for the purpose of unlawful gaming"; four of the committee were convicted of the offence as "persons who had the management of and assisted in conducting the business of the house"; and three members of the club were convicted of the offence as persons who by playing "assisted in conducting the business of the house." *Jenks* v. *Turpin*, 161

The game of baccarat was played nightly at the club. About twelve persons played at a time at a special table provided for the purpose. One of the players kept the bank and played against all the others who sat round the table. Three packs of cards were used for the deal, two cards were dealt to each player, the banker included. The object of the game was to get nine in pips, or as near thereto as

Gaming (continued)—

possible. After the cards had been dealt, the players before looking at their cards made stakes within the bank limit. The banker then looked at his cards, and declared whether he would give the players the option of drawing a fresh card, and each of the players in turn then elected to draw or stand. If the banker had nine, and none of the others had, he swept the board. If he had not nine, but a less number, he won from all who were further from nine, and paid to all who were nearer to nine than he was. Play commenced every afternoon at 4.30, and, with the exception of three hours' intermission, was continued until 3, and at times until 8, the next morning. The banks ranged from 25*l.* to 1,000*l.*, and there was a fresh bank about every twenty minutes. Ibid.

Upon each of these banks Jenks received one per cent. He also received 5*s.* from each player up to 2 a.m. After that hour he received 5*s.* per hour from each player up to 5 a.m., and after that 1*l.* per hour from each player. He also cashed cheques for the players, charging one per cent. for so doing. The committee had the control of the internal management of the club. The members were elected by the committee, and paid an entrance fee of ten guineas and an annual subscription of six guineas. None but members were admitted to the card room:—*Held*, that the offence of "unlawful gaming" consists in gaming—that is, playing at a game of chance for money—at a common gaming-house; that the Park Club was a common gaming-house, and that the playing therein of baccarat was "unlawful gaming" within section 4 of 17 & 18 Vict. c. 38. Ibid.

Held also, that Jenks and the four members of the committee were properly convicted, but that the players were wrongfully convicted of the charge preferred against them under the statute. Ibid.

—— See LICENSING ACT.

Gaming and Wagering—*the betting houses act* (1853) *amendment act*, 1874 (37 *Vict. c.* 15): 16 *&* 17 *Vict. c.* 119]—The publication of an advertisement that any person will give information for the purpose of a bet, to be penal under the Act of 1874 amending the Betting House Act, 1853, must be in respect of a bet made in a manner which is penal under the Betting Houses Act, 1853. *Cox* v. *Andrews*, 34

Guardians, Power of. See POOR LAW.

Highway—*expenses of diverting footways: costs of independent solicitor retained by local board: highway act*, 1835 (5 *&* 6 *Will.* 4. *c.* 50), *ss.* 84 *and* 101]—The costs of an independent solicitor retained by the local board to take all the necessary steps for diverting three footways desired by a private person to be diverted, are not "expenses" within the Highway Act, 1835 (5 & 6 Will. 4. c. 50), s. 84; and a condition that the person desiring the diversion of a footway shall pay all costs and expenses of diverting the same, may give the local board a right to recover such costs by action, but not as "expenses" recoverable in a summary manner under section 101. *United Land Co.* v. *Tottenham Local Board*, 136

—— *liability to repair: main road: portions of a road ceasing to be turnpike road:* 41 *&* 42 *Vict. c.* 77. *s.* 13]—The Highways and Locomotives Act, 1878 (41 & 42 Vict. c. 77), s. 13 (which enacts that any road which, after the 31st of December, 1870, ceases to be a turnpike road, shall be deemed to be a main road, and makes the county liable for half the expense of repairing such road), is applicable to a road as a whole, and not to part of a road. Therefore, where parts of certain turnpike roads had, upon the extension of the boundaries of a borough in 1872, been taken out of the turnpike trusts,—*Held*, that they had not thereby become main roads within the meaning of the section, and that the county was not liable to contribute one-half the expense of their repair. *The Justices of Lancashire* v. *The Mayor, &c., of Rochdale* (H.L.), 5

—— *liability to repair: turnpike road: main road: highways and locomotives (amendment) act*, 1878 (41 *&* 42 *Vict. c.* 77), *s.* 13]—A provision in a Turnpike Act forbidding the trustees to levy tolls or spend money on any portion of their turnpike road within a town does not prevent such portion from remaining part of the turnpike road within the meaning of the Highways and Locomotives (Amendment) Act, 1878, s. 13. *The Justices of the Peace for the West Riding of the County of York* v. *The Queen* (H.L.), 41

Nor does a road, in respect of which an agreement has been made, under 21 & 22 Vict. c. 98. s. 41, between a town and the turnpike trustees, by which turnpikes are removed therefrom, and the repair thereof is undertaken by the town, cease on that account to form part of a turnpike road within the same section. Ibid.

Therefore, where a turnpike road which on the 31st of December, 1870, included such parts as above mentioned, between that date and the passing of the Highways and Locomotives (Amendment) Act ceased to be a turnpike road, the obligation of the county, under section 13, to contribute towards the maintenance of the road extended to such parts, though not previously maintained by the turnpike trustees. Ibid.

Highway (continued)—

—— *main road: repair: costs of maintenance: contribution: "county authority of the county in which such road is situated": highway act*, 1862 (25 & 26 *Vict. c.* 61), *s.* 2: *highways (amendment) act*, 1878 (41 & 42 *Vict. c.* 77, *ss.* 13 *and* 38]—By the Highways (Amendment) Act, 1878, s. 13, half the cost of maintenance of a road that has ceased to be a turnpike road is to be paid "by the county authority of the county in which such road is situate"; and "county" in that Act is declared to have the same meaning as it has in the Highway Act, 1862 (25 & 26 Vict. c. 61), s. 2, which provides that for the purpose of that Act "all liberties and franchises except boroughs shall be considered as forming part of the county by which they are surrounded." The highway authority of the borough of Over Darwen in Lancashire claimed contribution, in respect of the maintenance of part of a road in the borough that had ceased to be a turnpike road, from the county authority of the county of Lancashire:—*Held*, that the word "county" in the Highways (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 13, is a geographical term; and the county authority of Lancashire, by which the road in question is surrounded, is liable to contribute as "the county authority of the county in which such road is situate." *The Mayor &c. of Over Darwen* v. *The Justices of Lancaster*, 198

—— *obstruction: omission to remove: highway act*, 1835 (5 & 6 *Will. 4. c.* 50), *s.* 72: "*wilfully obstruct*"]—Magistrates convicted the appellant of the offence of "wilfully obstructing the free passage of a highway," under 5 & 6 Will. 4. c. 50. s. 72, although the appellant had not done any act of obstruction:—*Held*, that an omission to remove an obstruction after notice to remove it might amount to wilful obstruction. *Gully* v. *Smith*, 35

—— See PRACTICE; PUBLIC HEALTH.

Husband and Wife. See EVIDENCE; POOR.

Idle and Disorderly Persons. See BEGGING.

Infant. See MASTER AND SERVANT.

Innkeeper. See LICENSING ACT.

Inquest. See CORONER; CREMATION.

Irremovability. See POOR.

Jervis's Act. See LANDS AND RAILWAYS CLAUSES ACTS.

Jurisdiction. See BASTARDY; FALSE PRETENCES; PRACTICE.

Justices, Jurisdiction of. See PUBLIC HEALTH.

Lands and Railways Clauses Acts—*Jervis's Act: compensation not exceeding* 50*l.*: "*settlement by two justices*": "*order*": "*damages directed to be paid*": 8 *Vict. c.* 18. *ss.* 22 *and* 24: 8 *Vict. c.* 20. *ss.* 6, 16, *and* 140: 11 & 12 *Vict. c.* 43. *s.* 11]—The "settlement" of compensation by two Justices for lands taken or injuriously affected under section 22 of the Lands Clauses Act, 1845, is not an "order" within Jervis's Act, and the complaint need not be made within six months of the matter arising; neither is it a decision by which "damages are directed to be paid" enforceable by distress within section 140 of the Railways Clauses Act, 1845. *Reg.* v. *Edwards (Justice) and the Eastern and Midland Rail. Co.* (App.), 149

In re Edmundson; The Queen v. *The Leeds and Bradford Railway Company* (17 Q.B. Rep. 67; 21 Law J. Rep. M.C. 193) overruled. Ibid.

Larceny -*possession obtained by fraud*]—The prisoner went into an inn, and asked the barmaid for six-pennyworth of whisky, for which he put down half-a-sovereign and received 9*s.* 6*d.* in change. He then asked for the half-sovereign back, saying he thought he had change. The barmaid gave him the half-sovereign, but he did not return the 9*s.* 6*d.* The prisoner then put down 10*s.* in silver and a half-sovereign, asking the barmaid to give him a sovereign for it, which she did. The barmaid had no authority to pay over money without receiving the proper change, and had no intention of or knowledge that she was so doing:—*Held*, that the prisoner was rightly convicted of larceny. *Reg.* v. *Hollis* (C.C.R.), 38

—— *bailment of money*]—The prisoner was engaged by the owner of a horse to look after it for a few days, and afterwards to sell it. He sold it for 15*l.* The owner having sent his wife to receive the money, she asked the prisoner to give her the money; this the prisoner refused to do, and eventually absconded with the money and dishonestly appropriated it:—*Held* (STEPHEN, J., *dissentiente*), that the prisoner was a bailee of the money. *Reg.* v. *De Banks* (C.C.R.), 132

—— See EVIDENCE.

Licensing Act—*intoxicating liquors (licensing) act*, 1872 (35 & 36 *Vict. c.* 94), *s.* 17: *suffering gaming on licensed premises: knowledge of servant: proof of knowledge on part of innkeeper: mens rea*]—The respondent, an inn-

Licensing Act (continued)—

keeper, was charged under 35 & 36 Vict. c. 94. s. 17 with "suffering" gaming to be carried on on his premises. The gaming in question took place with the knowledge of the respondent's potman, who took no steps to prevent it. The Justices dismissed the information, holding that there was no evidence that the respondent knew that gaming was going on or that he had willingly shut his eyes to what was taking place, and that knowledge of the potman was not such constructive knowledge by the respondent as would render him liable to a conviction:—*Held*, upon the above facts, that the Justices had acted rightly in dismissing the information. *Somerset* v. *Hart*, 77

—— *mortgagee: power of attorney: renewal without concurrence of licence-holder: appeal: person aggrieved:* 9 *Geo.* 4. *c.* 61. *s.* 27]—The mortgagee of licensed premises, with a covenant by the mortgagor and licence-holder to assign the licence, and an irrevocable appointment of the mortgagee as the mortgagor's attorney to sign such documents and do such acts as the mortgagee might consider necessary, has the same title to the renewal in the name of the licence-holder of a licence for the sale of intoxicating liquors as the licence-holder, notwithstanding that the licence-holder objects to the renewal of the licence; and, if the Justices refuse the renewal, the mortgagee may appeal as a "person aggrieved." *Garrett* v. *The Licensing Justices of St. Marylebone*, 81

—— "*selling liquor to a drunken person*": *no indications of insobriety: mens rea:* 35 & 36 *Vict. c.* 94. *s.* 13: "*drunken person*"]—The offence of a licensed person "selling any intoxicating liquor to any drunken person," under section 13 of the Licensing Act, 1872, is committed by a sale to a person who is drunk, although he shew no indications of insobriety and neither the licence-holder nor his servants notice that he is drunk. *Cundy* v. *Le Cocq*, 125

—— See POOR.

Local Government Board. See PUBLIC HEALTH.

Mandamus. See PRACTICE.

Master and Servant—*infant apprentice: employers and workmen act* (38 & 39 *Vict. c.* 90): *validity of indenture of apprenticeship: stipulation to the prejudice of infant*]—By an apprenticeship deed the master covenanted to find the apprentice fair and reasonable work during the term, and pay him wages at a certain rate during the term. The apprentice (an infant) and his father covenanted that the master should not be liable to pay any wages to the apprentice so long as his business should be interrupted by any turn out, and the apprentice was expressly authorised by the deed, during any such turn out, to employ himself in any other manner or with any other person for his own benefit. The apprentice absented himself from work, and the master applied, under 38 & 39 Vict. c. 90, for an order to compel him to return. The magistrate refused the application:—*Held*, that the magistrate was right, as the deed was invalid and incapable of being enforced against the infant, by reason of the clause providing for the cessation of wages, which was a stipulation necessarily to the prejudice of the infant. The proviso entitling the infant to earn money elsewhere did not alter the character of the preceding clause so as to make the whole deed equitable or capable of being upheld. *Meakin* v. *Morris*, 72

Leslie v. *Fitz Patrick* (47 Law J. Rep. M.C. 22) questioned. Ibid.

Mens rea. See LICENSING ACTS.

Metropolis—*building beyond line of street: metropolis management amendment act*, 1862 (25 & 26 *Vict. c.* 102), *s.* 75: "*general line of building*": "*to be decided by the superintending architect*": *jurisdiction of magistrate: architect's decision*]—Upon a complaint to a magistrate by a district board under section 75 of the Metropolis Management Act, 1862, that a building has been erected in a street, place, or row without the consent of the Metropolitan Board of Works, beyond the general line of buildings as decided by the superintending architect of the Metropolitan Board of Works, the decision of such architect is conclusive as to the general line of buildings, and the magistrate has no jurisdiction to decide what is the general line of buildings (*per* BOWEN, L.J., and FRY, L.J.; *dissentiente* BRETT, M.R.). *The Plumstead District Board of Works* v. *Spackman* (App.), 142

St. George's Hanover Square v. *Sparrow* (33 Law J. Rep. M.C. 18) and *Simpson* v. *Smith* (40 Law J. Rep. M.C. 89) disapproved. Ibid.

—— See POOR.

Metropolis Management Act, 1855 (18 & 19 *Vict. c.* 120), *s.* 250: "*owner*": *metropolis management amendment act*, 1862 (25 & 26 *Vict. c.* 102), *s.* 77: "*owner of land abutting on*" *new street: liability to contribute to expenses of paving: owner of strip a few inches wide bound to maintain fence*]—The owner of a strip of land which was only four inches wide, and upon which he was bound by covenant to maintain

Metropolis Management Act, 1855 (continued)—
a fence throughout its entire length, was called upon by a district board under the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 77, to contribute to the expenses of paving a new street upon which the strip abutted:—*Held*, that he was one of "the owners of the land abutting on the" street, within the meaning of that section and of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250, interpreting the word "owner." *Williams* v. *The Wandsworth Board of Works*, 187

Mortgagee. See LICENSING ACTS.

Nuisance. See CREMATION.

Obstruction. See HIGHWAY.

Parish. See POOR; PUBLIC HEALTH.

Plays. See STAGE PLAYS.

Pleading. See PRACTICE.

Poor—*divided parishes act* (39 & 40 *Vict. c.* 61), *s.* 35: *pauper: order of removal: children under sixteen: birth settlement of father: widowed mother: derivative settlement*]—G. M. was born in Liverpool, and never acquired a settlement for himself. G. M. died in 1882, leaving a widow (who had no other settlement save what she acquired from her husband) and five children, none of whom were born in Liverpool. The children, who were under the age of sixteen and unemancipated, became chargeable to Portsea Union, and were ordered to be removed to Liverpool:—*Held*, upon the above facts, that the order of removal was rightly made, inasmuch as the children took their father's birth settlement in Liverpool, without any enquiry being necessary as to the settlement of their widowed mother. *The Guardians of the Parish of Liverpool* v. *The Guardians of the Portsea Union*, 58

—— *husband and wife: maintenance of married woman: amount which husband can be ordered to pay:* 31 & 32 *Vict. c.* 122. *s.* 33] —By section 33 of 31 & 32 Vict. c. 122, Justices are empowered to order a husband to pay such sum towards the cost of the relief of his wife as, after consideration of all the circumstances of the case, shall appear to them to be proper. In a case where the guardians had allowed a married woman who had become chargeable to a union 3*s.* a week, and who had summoned her husband under the above statute, the Justices ordered him to pay 15*s.* a week towards the cost of the relief of his wife: —*Held* (reversing the judgment of the Queen's Bench Division, *ante*, p. 56), that the order could be made, for that it was not a condition precedent to the power of the Justices to make an order that the guardians should first have fixed a sum for the future, and that they were not limited by the amount already paid by way of relief to the wife. *Dinning* v. *The South Shields Union* (App.), 90

—— *order of removal: children deserted by widowed mother: derivative settlement: birth settlement of children: divided parishes act:* 39 & 40 *Vict. c.* 61. *s.* 35]—R. C. was born in the appellant union, and died leaving a widow and four children, none of whom were born in that union. Neither R. C. nor his widow had acquired a settlement in his or her own right, and the widow had deserted the children after the death of her husband. The father of R. C. had acquired a settlement in the appellant union. The children, who were under the age of sixteen, became chargeable to the respondent union and were ordered to be removed to the appellant union:—*Held*, that the order of removal must be quashed, inasmuch as it was not shewn that the widowed mother had acquired a settlement of her own, and, consequently, the children would have to take the settlement of their father, which was a derivative settlement and could not be enquired into, as derivative settlements were abolished by 39 & 40 Vict. c. 61. s. 35. *The Guardians of Headington Union, Oxford*, v. *The Guardians of St. Olave's Union, Surrey* (App.), 91

—— *rate: telephone company: rateability of wires: occupation: licence*]—The appellants, a telephone company, laid down for the purposes of their business, in the respondents' township, overhead wires supported either by poles fixed in the ground or by attachments to the roofs, chimneys, or walls of some of the buildings, which attachments were easily removable without damage being done to the buildings. The consent of the owners or occupiers of land into which poles were fixed or buildings to which attachments were made was in all cases given by printed agreement, called wayleaves, under which the appellants undertook to pay a small annual acknowledgment and to remove the wires, poles, or other attachments within a certain time upon a receipt by them of notice to do so by such owners or occupiers:—*Held*, that the appellants were the exclusive occupiers of the posts and other attachments and supports for wires as well as of the wires thereto attached, and were accordingly liable to be assessed to the poor rate in respect of one entire system. *The Lancashire and Cheshire Telephone Exchange Co.* (*Lim.*) v. *The Overseers of the Township of Manchester*, 195

Poor (continued)—

—— *rate: telegraph wires: exclusive occupation:* 43 *Eliz. c.* 2]—By the terms of an agreement between the plaintiffs and the Postmaster-General, the latter covenanted that he would provide and thenceforth during the continuance of the agreement appropriate and maintain for the exclusive use of the plaintiffs certain telegraph wires between the landing-place of a submarine cable near the Land's End and the office of the plaintiffs at Penzance, and thence to their office in London, with the necessary translators and batteries: such wires, translators, and batteries to remain the property of the Postmaster-General. The plaintiffs were to provide and maintain their own instruments, and to work the wires at their own cost, permitting the Postmaster-General from time to time to inspect the instruments. The Postmaster-General was to repair accidental defects and interruptions, but to be paid for making good any damage to the wires occasioned by the neglect or default of the plaintiffs. The plaintiffs were to pay rent for the wires, and not to part with the possession of them or sub-let the benefit of the agreement without the consent of the Postmaster-General, who, in the event of their doing so, was to be at liberty to determine the agreement. On the expiration of the agreement the Postmaster-General was to resume possession of the wires. The telegraph posts remained the property of the Postmaster-General, who could, if he chose, attach other wires to them besides those appropriated to the use of the plaintiffs:—*Held*, by CAVE, J. (LORD COLERIDGE, C.J., *dubitante*), that the plaintiffs had not such an exclusive occupation of the wires appropriated to their use as would make them rateable to the relief of the poor in respect thereof. *The Paris and New York Telegraph Co.* v. *The Penzance Union*, 189

—— *rating: quinquennial valuation: supplemental valuation: alteration: preceding twelve months: evidence: valuation (metropolis) act*, 1869 (32 & 33 *Vict. c.* 67), *ss.* 46 *and* 47]—The quinquennial valuation made under the Valuation (Metropolis) Act, 1869, is conclusive as to the value of the property at the time it was made, and the owner is not entitled, for the purpose of a supplemental valuation list, to have the property valued at its present actual value and such value entered in the supplementary list, but to have deducted merely the alteration, if any, in value which has taken place during the preceding twelve months (*per* BRETT, M.R., and BOWEN, L.J.; FRY, L.J., *dissentiente*). *Reg.* v. *The East and West India Docks Co.* (App.), 97

In support of a claim by the owner of property to have that property inserted in a supplemental valuation list made by the overseers of a metropolitan parish, on the ground that an alteration has taken place in the value of such property within the preceding twelve months, within the meaning of section 46 of the Valuation (Metropolis) Act, 1869, evidence of diminution in annual profits is admissible and relevant; and, unless explained or rebutted, is evidence of such diminution. Ibid.

Judgment of Divisional Court (reported *ante*, p. 20) varied. Ibid.

—— *rating: school board: land owned and land rented by school board: elementary education act*, 1870 (33 & 34 *Vict. c.* 75), *ss.* 18, 19, 21, 22, *and* 53: 6 & 7 *Will.* 4. *c.* 96. *s.* 1]—A school board formed under the Elementary Education Act, 1870, is liable to be assessed to the poor rate, both in respect of schools built upon land belonging to the board, and in respect of schools rented by the board as tenants, even though the board make no profit out of such schools. *Reg.* v. *The West Bromwich School Board* (App.), 153

Judgment of the Queen's Bench Division (*ante*, p. 67) affirmed. Ibid.

—— *settlement: irremovability: residence:* 39 & 40 *Vict. c.* 61. *s.* 34: *mother and son: breach of residence*]—The pauper was born in the appellant union, and had been engaged as a sailor in the merchant service. The pauper's mother lived in the respondent union, and the pauper had since 1876 lived with her between his different voyages. When the pauper was away at sea or otherwise, he invariably left some of his clothes and other belongings at his mother's house, but had no separate bedroom or bed. Upon returning home from any voyage the pauper was in the habit, up to the date of his discharge in 1883, of handing over to his mother a portion of his savings:—*Held*, upon the above facts, that the Justices were justified in holding that the pauper had not acquired a settlement by residence in the respondent union under 39 & 40 Vict. c. 61. s. 34. *The Guardians of Merthyr Tydvil Union* v. *The Guardians of Stepney Union*, 183

—— *settlement of illegitimate children: derivative settlement of mother: divided parishes and poor law amendment act*, 1876 (39 & 40 *Vict. c.* 61), *s.* 35]—An order was made for the removal to the place of their birth of two illegitimate children under sixteen whose mother had never acquired any settlement for herself:—*Held* (affirming the judgment of the Queen's Bench Division), that the order was right: for that under 39 & 40 Vict. c. 61. s. 35 the settlement of the mother could only be enquired into in order to ascertain whether it was a derivative settlement or not; and that on its appearing that it was a derivative settlement, it must be rejected and the children be deemed to be settled in the place

Poor (continued)—

of their birth. *In re The Guardians of the Parish of Marylebone* v. *The Guardians of the Wycombe Union* (App.), 88

—— *statutes* 4 *&* 5 *Will.* 4. *c.* 76, *and* 31 *&* 32 *Vict. c.* 122: *order of local government board of* 1867: *workhouse: payment of Roman Catholic clergyman: power of guardians:* "*person in holy orders*"]—By an order of the Local Government Board, dated the 19th of August, 1867, it is provided that guardians may employ such persons as they shall deem requisite in or about the workhouse or workhouse premises, or on the land occupied for the employment of the pauper inmates, or otherwise in or about the relief of the indoor poor, as shall appear to them to be suitable:—*Held*, that, under the terms of the above order, the guardians were authorised to appoint and pay a Roman Catholic clergyman for the purpose of attending to the spiritual wants of Roman Catholic paupers. *Reg.* v. *Haslehurst*, 127

—— See PRACTICE.

Possession by Fraud. See LARCENY.

Practice—*appeal: special case stated by quarter sessions: removal into queen's bench division by certiorari: highway act*, 1835 (5 *&* 6 *Will.* 4. *c.* 50), *ss.* 107 *and* 108: *judicature act*, 1873, *ss.* 19 *and* 45]—An appeal lies without leave from a judgment of the Queen's Bench Division on a Special Case stated by Quarter Sessions pursuant to the Highway Act, 1835, section 108, as the Queen's Bench Division, in giving judgment on such a case, exercises its own original common law jurisdiction, and not any new statutory appellate jurisdiction. *Illingworth* v. *The Bulmer East Highway Board* (App.), 60

The Queen v. *The Swindon Local Board* (49 Law J. Rep. Q.B. 522) distinguished. Ibid.

—— *court of appeal: jurisdiction to entertain appeal: case stated for opinion of queen's bench division: Baines's act*, 12 *&* 13 *Vict. c.* 45. *s.* 11: *poor rate: interlocutory appeal: judicature act*, 1873, *s.* 19]—After notice of appeal against a poor rate had been given in the Court of Quarter Sessions, the parties agreed, under the provisions of 12 & 13 Vict. c. 45. s. 11, to state a case for the opinion of the Queen's Bench Division, judgment to be entered by the Court of Quarter Sessions in conformity with that opinion:—*Held*, that the opinion given by the Queen's Bench Division was an order within the meaning of the Judicature Act, 1873, s. 19, which was subject to appeal; also, that the order was an interlocutory and not a final order. *The Mayor and Corporation of Peterborough* v. *The Parish of Wilsthorpe and the Assessment Committee of the Stamford Union*, (App.), 33

—— *writ of mandamus: return of unconditional compliance: pleading over: rules of* 1883 (*order LIII. rule* 9, *and order LXVIII. rule* 1)—The practice which allowed a plea to a return of unconditional compliance to a writ of *mandamus* is in no way affected by the provisions contained in Order LIII. rule 9 of the Rules of the Supreme Court, 1883. *Reg.* v. *The Justices of Staffordshire*, 159

Public Health—*keeping animals so as to be injurious to health: by-law: public health act*, 1875 (38 *&* 39 *Vict. c.* 55), *ss.* 44 *and* 276]—A by-law forbidding the keeping of swine within fifty feet of a dwelling-house, made in a rural sanitary district under the powers of section 44 of the Public Health Act, 1875, allowing by-laws to be made "for the prevention of the keeping of animals so as to be injurious to health,"—*Held*, unreasonable and not enforceable. *Heap* v. *The Burnley Union Rural Sanitary Authority*, 76

—— (38 *&* 39 *Vict. c.* 55), *ss.* 150 *and* 268: *apportionment of expenses of work in street: summary proceedings: jurisdiction of justices of peace: appeal to local government board*]—In a proceeding by an urban sanitary authority, under section 150 of the Public Health Act, 1875, to recover in a summary manner from a frontager in default the expenses incurred in executing works in a street, the Justices are bound to make an order for payment even though the works were done and the apportionment made on a notice to the owner to pave, &c., as part of a street, land which at the time of such notice was enclosed private land. *Reg.* v. *The Recorder of Sheffield* (App.), 1

Where the whole expenses have been apportioned on such a notice, the only remedy of the person aggrieved is to appeal to the Local Government Board under section 268, for the grievance is a wrong order made by the urban sanitary authority, and the Justices have no jurisdiction to enquire whether that order be right or not. Ibid.

Judgment of the Queen's Bench Division (52 Law J. Rep. M.C. 78) affirmed. Ibid.

—— (38 *&* 39 *Vict. c.* 55), *s.* 216—*parish divided into two districts: part of parish excluded from urban district: repair of highways in excluded part: amount of rate assessed for*]—The hamlet of G., which was formerly a parish maintaining its own highways, in the parish of H., was divided into two districts. In

Public Health (continued)—

1865 the inner district was constituted a local government district, and became an urban district within the meaning of the Public Health Act, 1875, the respondents being the local board of that district, from which the outer district was excluded. The respondents, having repaired the highways in the outer district, levied a highway rate of 2*s.* 6*d.* in the pound over the outer district; but as this was found insufficient to pay the expenses of such repairs, a special meeting was, after notice, subsequently held, at which a rate of 3*s.* 4*d.* in the pound was separately assessed on the appellants and others, the inhabitants of the outer district. The consent of four-fifths of the inhabitants of the outer district was not first obtained before the rate in question was levied:—*Held*, that the rate was valid, as the provisions of section 216 of the Public Health Act, 1875, rendered such consent unnecessary. *Dyson* v. *The Greetland Local Board* (App.), 106

Quarter Sessions. See PRACTICE.

Railway Company. See CONTAGIOUS DISEASES ANIMALS ACT.

Rate. See POOR; PUBLIC HEALTH.

Receiving Stolen Goods. See EVIDENCE.

Removal. See POOR.

Repair. See HIGHWAY.

Repair, Liability to. See SEWERS, COMMISSION OF.

Residence. See POOR.

Road. See HIGHWAY.

School Board. See ELEMENTARY EDUCATION ACTS; POOR.

Scotland. See BASTARDY.

Sea Walls. See SEWERS, COMMISSION OF.

Settlement. See POOR.

Sewers, Commission of—*liability to repair rations tenuræ: extraordinary storm: presentments: orders:* 3 & 4 *Will.* 4. *c.* 22. *ss.* 13 *and* 46]—The prosecutor was the owner of certain low-lying lands situate on the Essex shore of the River Thames and protected from inundation by an ancient sea-wall which had been maintained and repaired by his predecessors in title from time immemorial. The lands and sea-wall were within the jurisdiction of the defendants, who were the commissioners of sewers for the district. Previous to the 18th of January, 1881, the wall was in good repair and in a proper condition to resist the flow of ordinary tides and ordinary weather; on that date there occurred an extraordinary high tide and storm, by which serious breaches were caused in the wall. The marsh bailiff thereupon ordered the prosecutor to execute certain repairs to the wall, which he did, and at courts of sewers held subsequently the commissioners ordered the prosecutor to do certain further repairs also rendered necessary by the storm of the 18th of January, 1881. These latter orders, which purported to be founded on general presentments of liability made twenty years previously, were also complied with by the prosecutor. The prosecutor having sued out a writ of *mandamus* to the commissioners to levy a rate in order to reimburse him the expenses so incurred, on the ground that he was only liable for repairs rendered necessary by ordinary weather, the commissioners contended that the plaintiff's liability extended to all repairs, whether caused by ordinary or extraordinary weather, and in support of their contention produced from the records of the commission certain presentments, orders, and other documents relating to the district and sea-wall:—*Held*, that the burden of proof was on the defendants; and (drawing inferences of fact) that the evidence did not establish such extraordinary liability on the part of the prosecutor; and that, as he was not in default at the time the breaches in the wall were caused, he was not bound to repair. *Held* further, that with regard to the repairs executed on the order of the marsh bailiff, the plaintiff was entitled to a *mandamus* to reimburse him the cost of the expenses thereby incurred; but that he was not entitled to a *mandamus* to be reimbursed the expenses incurred by the repairs executed on the orders of the commissioners, as those orders were equivalent to a verdict found after trial of a presentment, and, until set aside, the prosecutor was bound by them. *Reg.* v. *The Commissioners of Sewers for the Levels of Fobbing*, 113

Semble,—That a general presentment of liability to repair where no default is alleged is invalid and not warranted by sections 13 or 46 of 3 & 4 Will. 4. c. 22, Ibid.

Stage Plays—*theatres regulation act* (6 & 7 *Vict. c.* 68), *s.* 2: *place of public resort: public performance in private theatre*]—By 6 & 7 Vict. c. 68. s. 2 (the Theatres Regulation Act), it is enacted that "it shall not be lawful to have or keep any house or other place of public resort for the public per-

Stage Plays (continued)—

formance of stage plays without licence from the Lord Chamberlain." The appellant, owner of a private theatre, lent it to persons for the performance on four occasions of plays in it for the benefit of a charity. Such performances were advertised, and tickets of admission were sold by the managers on behalf of the charity to the general public, who witnessed the performances to the number of about 300 on each occasion. No money was taken at the doors; the appellant's servants opened and closed the house for the performances, and he never parted with the possession of the building, and received nothing for the use of his house or servants. The appellant was convicted under the above section, he not having any licence:—*Held*, that the conviction was right. *Shelley* v. *Bethell*, 16

Street, Line of. See METROPOLIS; PUBLIC HEALTH.

Telegraph. See POOR.

Telephone Company. See POOR.

Theatres. See STAGE PLAYS.

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THE

LAW JOURNAL REPORTS

FOR

THE YEAR 1884:

CASES

DECIDED BY THE

JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council,

REPORTED BY

EDWARD BULLOCK, ESQ., BARRISTER-AT-LAW.

MICHAELMAS 1883 TO MICHAELMAS 1884.

PRIVY COUNCIL, VOL. LIII.

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MDCCCLXXXIV.

CASES ARGUED AND DETERMINED

IN THE COURT OF

THE JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council.

MICHAELMAS 1883 TO MICHAELMAS 1884.

47 *Victoriæ.*

1883. Dec. 15. } ARCHIBALD HODGE (*appellant*) *v.* THE QUEEN (*respondent*).

Canada—Ontario—Liquor Licence Act, 1877—*Local Legislature—Powers of—British North America Act*, 1867, *s.* 91.

The Liquor Licence Act, 1877, *of Ontario, provides licensing boards for the province, and gives power to such boards to regulate the liquor traffic and to impose penalties:*—Held, *first, that such Act was not "The Regulation of Trade and Commerce," within the meaning of section* 91 *of the British North America Act*, 1867, *and was within the powers of the Provincial Legislature, and that such Legislature had power to delegate its authority to licensing boards; secondly, that the power to impose penalties included a power of imprisonment with or without hard labour.*

This is an appeal from a judgment of the Court of Appeal for Ontario.

The appellant was convicted on the 10th of May, 1881, of unlawfully permitting a billiard table to be used in his tavern, situate within the city of Toronto, during the time prohibited by the Liquor Licence Act for the sale of liquor therein, against the form of a resolution of the licence commissioners for the said city.

At the time of the alleged offence the appellant was the holder of a liquor licence, issued by the board of licence commissioners for the city of Toronto, under the Liquor Licence Act of the province of Ontario.

The appellant was also the holder of a licence from the corporation of the city of Toronto authorising him to carry on the business of a keeper of a billiard saloon.

A copy of the conviction is set out in their Lordships' judgment.

On the 27th of May, 1881, the appellant obtained a rule *nisi* in the Court of Queen's Bench for Ontario, calling upon the magistrate and the informant to shew cause why the conviction should not be quashed.

The rule came on for argument, and on the 25th of June, 1881, that Court quashed the conviction.

The Attorney-General of Ontario appealed to the Court of Appeal for Ontario.

The appeal was heard, and on the 30th of June, 1882, that Court reversed the judgment of the Court below, adjudging that the rule *nisi* should be discharged with costs.

From this judgment the present appeal was brought.

Kerr, Q.C. (Canadian Bar), and *Jeune*, for the appellant.—The 4th section of the Liquor Licence Act is not within the legislative authority of the Legislature of Ontario. The Legislature of Ontario had no legislative authority to enact resolutions such as were passed by the board of licence commissioners, under which the conviction complained of was founded. It has no power to create offences, or to impose penalties for the infraction of any resolution. But if the Legislature of Ontario had such legislative authority, it could not delegate such authority to a board of commissioners or to any other body or person. The maxim "*Delegatus non potest delegare*" is precisely in point. The resolutions of the board of commissioners are therefore illegal and unauthorised, and the conviction is bad. The Liquor Licence Act does not authorise the imposition of hard labour.

Hodge v. *The Queen.*

If it does authorise the imposition of such penalty it is beyond the legislative authority of the Provincial Legislature. They referred to *Jonas* v. *Gilbert* (1), *Hawkins's Pleas of the Crown*, p. 184, and to *Easton's Case* (2).

Davey, Q.C., *Æmilius Irving, Q.C.* (Canadian Bar), and *Raleigh*, for the Crown. —The provincial Acts relating to this matter are within the competence of the Ontario Legislature. The resolution under which the appellant was convicted has the force of law in the city of Toronto. The Provincial Legislatures have full power to legislate in regard to licences for the sale of liquor. The maxim "*Delegatus non potest delegare*" is not applicable.

The powers conferred on the licensing boards are in the nature of police regulations of a local character, and are therefore within the powers of the Provincial Legislature. The power to impose penalties includes a power to imprison with or without hard labour. They referred to *The Citizens Insurance Company* v. *Parsons* (3), *Russell* v. *The Queen* (4), and to *Cartwright's Cases on the British North America Act*, 1867.

Sir Barnes Peacock delivered the judgment of their Lordships (5) :—

The appellant, Archibald Hodge, the proprietor of a tavern known as the St. James's Hotel, in the city of Toronto, and who, on the 7th of May, 1881, was the holder of a licence for the retail of spirituous liquors in his tavern, and also licensed to keep a billiard saloon, was summoned before the police magistrate of Toronto for a breach of the resolutions of the licence commissioners of Toronto, and was convicted on evidence sufficient to sustain the conviction if the magistrate had authority in law to make it.

The conviction is as follows, namely :—

"Conviction.

"Canada: Province of Ontario, county of York, city of Toronto, to wit :—

"Be it remembered, that on the 19th day of May, in the year of our Lord one thousand eight hundred and eighty-one, at the city of Toronto, in the county of York, Archibald G. Hodge, of the said city, is convicted before me, George Taylor Denison, Esquire, police magistrate in and for the said city of Toronto, for that he, the said Archibald G. Hodge, being a person who, after the passing of the resolution hereinafter mentioned, received, and who, at the time of the committing of the offence hereinafter mentioned, held, a licence under the Liquor Licence Act, for and in respect of the tavern known as the St. James's Hotel, situate on York Street, within the city of Toronto, on the seventh day of May in the year aforesaid, at the said city of Toronto, did unlawfully permit, allow and suffer a billiard table to be used, and a game of billiards to be played thereon, in the said tavern, during the time prohibited by the Liquor Licence Act for the sale of liquor therein—to wit, after the hour of seven o'clock at night on the said seventh day of May, being Saturday—against the form of the resolution of the licence commissioners for the city of Toronto for regulating taverns and shops, passed on the twenty-fifth day of April, in the year aforesaid, in such case made and provided.

"Thomas Dexter, of said city, licence inspector of the city of Toronto, being the complainant.

"And I adjudge the said Archibald G. Hodge, for his said offence, to forfeit and pay the sum of twenty dollars, to be paid and applied according to law; and also to pay to the said Thomas Dexter the sum of two dollars and eighty-five cents for his costs in this behalf; and if the said several sums be not paid forthwith, then I order that the same be levied by distress and sale of goods and chattels of the said Archibald G. Hodge; and in default of sufficient distress, I adjudge the said Archibald G. Hodge to be imprisoned in the common gaol of the said city of Toronto and county of York, at Toronto, in the county of York, and there be kept at hard labour for the space of fifteen days, unless the said sums, and the costs and charges of conveying of the said Archibald G. Hodge to the said gaol, shall be sooner paid."

(1) 5 Can. Sup. Court Rep. 356.
(2) 12 Ad. & E. 645; 10 Law J. Rep. Q.B. 16.
(3) 51 Law J. Rep. P.C. 11; Law Rep. 7 App. Cas. 96.
(4) 51 Law J. Rep. P.C. 77; Law Rep. 7 App. Cas. 829.
(5) Lord FitzGerald, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

Hodge v. *The Queen.*

On the 27th of May, 1881, a rule *nisi* was obtained to remove that conviction into the Court of Queen's Bench for Ontario, in order that it should be quashed as illegal, on the grounds—first, that the said resolution of the said licence commissioners is illegal and unauthorised; secondly, that the said licence commissioners had no authority to pass the resolution prohibiting the game of billiards as in the said resolution, nor had they power to authorise the imposition of a fine, or, in default of payment thereof, imprisonment for a violation of the said resolution; thirdly, the Liquor Licence Act, under which the said commissioners have assumed to pass the said resolution, is beyond the authority of the Legislature of Ontario, and does not authorise the said resolution.

It will be observed that the question whether the Local Legislature could confer authority on the licence commissioners to make the resolution in question is not directly raised by the rule *nisi*. On the 27th of June, 1881, that rule was made absolute, and an order pronounced by the Court of Queen's Bench to quash the conviction. The judgment of the Court, which seems to have been unanimous, was delivered by Chief Justice Hagarty, with elaborate reasons; but finally it will be found that the decision of the Court rests on one ground alone, and does not profess to decide the question which on this appeal was principally discussed before their Lordships. The Chief Justice, in the course of his judgment, says:—

"It was stated to us that the parties desired to present directly to the Court the very important question whether the Local Legislature, assuming that it had the power to make these regulations and create these offences, and annex penalties for their infraction, could delegate such powers to a board of commissioners or any other authority outside their own legislative body."

And, again, he adds:—

"We are thus brought in face of a very serious question—namely, the power of the Ontario Legislature to vest in the licence board the power of creating new offences and annexing penalties for their commission."

And concludes his judgment thus, referring to the resolutions:—

"The Legislature has not enacted any of these, but has merely authorised each board in its discretion to make them.

"It seems very difficult, in our judgment, to hold that the Confederation Act gives any such power of delegating authority, first of creating a *quasi* offence, and then of punishing it by fine or imprisonment.

"We think it is a power that must be exercised by the Legislature alone.

"In all these questions of *ultra vires* the powers of our Legislature, we consider it our wisest course not to widen the discussion by considerations not necessarily involved in the decision of the point in controversy.

"We therefore enter into no general consideration of the powers of the Legislature to legislate on this subject; but, assuming this right so to do, we feel constrained to hold that they cannot devolve or delegate these powers to the discretion of a local board of commissioners.

"We think the defendant has the right to say that he has not offended against any law of the province, and that the convictions cannot be supported."

The case was taken from the Queen's Bench on appeal to the Court of Appeal for Ontario, under the Ontario Act, 44 Vict. c. 27, and on the 30th of June, 1882, that Court reversed the decision of the Queen's Bench and affirmed the conviction.

Two questions only appear to have been discussed in the Court of Appeal—first, that the Legislature of Ontario had not authority to enact such regulations as were enacted by the board of commissioners, and to create offences and annex penalties for their infraction; and, secondly, that if the Legislature had such authority, it could not delegate it to the board of commissioners, or any other authority outside their own legislative body.

This second ground was that on which the judgment of the Court of Queen's Bench rested.

The judgments delivered in the Court of Appeal by Chief Justice Spragge and Judge-Advocate Burton are able and elaborate, and were adopted by Justices Patterson and Morrisson, and their Lordships have derived considerable aid from a

careful consideration of the reasons given in both Courts.

The appellant now seeks to reverse the decision of the Court of Appeal, both on the two grounds on which the case was discussed in that Court, and on others technical, but substantial, and which were urged before this board with zeal and ability. The main questions arise on an Act of the Legislature of Ontario, and on what have been called the resolutions of the licence commissioners.

The Act in question is chapter 181 of the Revised Statutes of Ontario, 1877, and is cited "as the Liquor Licence Act."

Section 3 of this Act provides for the appointment of a board of licence commissioners for each city, county, union of counties, or electoral district, as the Lieutenant Governor may think fit, and sections 4 and 5 are as follow :—

"Section 4. Licence commissioners may, at any time before the first day in each year, pass a resolution or resolutions for regulating and determining the matters following—that is to say :—

"(1.) For defining the conditions and qualifications requisite to obtain tavern licences for the retail, within the municipality, of spirituous, fermented or other manufactured liquors, and also shop licences for the sale by retail, within the municipality, of such liquors in shops or places other than taverns, inns, alehouses, beerhouses, or places of public entertainment.

"(2.) For limiting the number of tavern and shop licences respectively, and for defining the respective times and localities within which, and the persons to whom, such limited number may be issued within the year from the first day of May of one year till the thirtieth day of April inclusive of the next year.

"(3.) For declaring that in cities a number not exceeding ten persons, and in towns a number not exceeding four persons, qualified to have a tavern licence, may be exempted from the necessity of having all the tavern accommodation required by law.

"(4.) For regulating the taverns and shops to be licensed.

"(5.) For fixing and defining the duties, powers and privileges of the inspector of licences of their district.

"Section 5. In and by any such resolution of a board of licence commissioners, the said board may impose penalties for the infraction thereof."

Section 43 prohibits the sale of intoxicating liquors from or after the hour of seven of the clock on Saturday till six of the clock on Monday morning thereafter.

Section 51 imposes on any person who sells spirituous liquors without the licence by law required, or otherwise violates any other provision of the Act, in respect of which violation no other punishment is prescribed, for the first offence a penalty of not less than twenty dollars and not more than fifty dollars, besides costs, and for the second offence imprisonment with hard labour for a period not exceeding three calendar months.

Section 52. For punishment of offences against section 43 (requiring taverns, &c., to be closed from seven o'clock on Saturday night until six o'clock on Monday morning), a penalty for the first offence of not less than twenty dollars with costs, or fifteen days imprisonment with hard labour, and with increasing penalties for second, third and fourth offences; and section 70 provides that where the resolution of the licence commissioners imposes a penalty, it may be recovered and enforced before a magistrate in the manner and to the extent that by-laws of municipal corporations may be enforced under the authority of the Municipal Act.

Licence commissioners were duly appointed under this statute, who, on the 25th of April, 1881, in pursuance of its provisions, made the resolution or regulation now questioned in relation to licensed taverns or shops in the city of Toronto, which contains (*inter alia*) the following paragraphs—namely—

"Nor shall any such licensed person, directly or indirectly as aforesaid, permit, allow or suffer any bowling alley, billiard or bagatelle table to be used, or any games or amusements of the like description to be played, in such tavern or shop, or in or upon any premises connected therewith, during the time prohibited by the Liquor Licence Act, or by this resolution, for the sale of liquor therein.

"Any person or persons guilty of any infraction of any of the provisions of this resolution shall, upon conviction thereof

before the police magistrate of the city of Toronto, forfeit and pay a penalty of twenty dollars and costs; and in default of payment thereof forthwith, the said police magistrate shall issue his warrant to levy the said penalty by distress and sale of the goods and chattels of the offender; and in default of sufficient distress in that behalf, the said police magistrate shall by warrant commit the offender to the common gaol of the city of Toronto, with or without hard labour, for the period of fifteen days, unless the said penalty and costs, and all costs of distress and commitment, be sooner paid."

The appellant was the holder of a retail licence for his tavern, and had signed an undertaking, as follows:—

"We, the undersigned holders of licences for taverns and shops in the city of Toronto, respectively acknowledge that we have severally and respectively received a copy of the resolution of the licence commissioners of the city of Toronto to regulate taverns and shops, passed on the 25th day of April last, hereunto annexed, upon the several dates set opposite to our respective signatures hereunder written, and we severally and respectively promise, undertake and agree to observe and perform the conditions and provisions of such resolution.

"2nd May, Tavern. A. G. HODGE.
"(L.S.)"

He was also the holder of a billiard licence for the city of Toronto to keep a billiard saloon with one table for the year 1881, and, under it, had a billiard table in his tavern.

He did permit this billiard table to be used as such within the period prohibited by the resolution of the licence commissioners, and it was for that infraction of their rules he was prosecuted and convicted.

The preceding statement of the facts is sufficient to enable their Lordships to determine the question raised on the appeal.

Mr. Kerr, Q.C., and Mr. Jeune, in their full and very able argument for the appellant, informed their Lordships that the first and principal question in the cause was whether the Liquor Licence Act of 1877, in its 4th and 5th sections, was *ultra vires* of the Ontario Legislature, and properly said that it was a matter of importance as between the Dominion Parliament and the Legislature of the province.

Their Lordships do not think it necessary in the present case to lay down any general rule or rules for the construction of the British North America Act. They are impressed with the justice of an observation by Chief Justice Hagarty: "That in all these questions of *ultra vires* it is the wisest course not to widen the discussion by considerations not necessarily involved in the decision of the point in controversy." They do not forget that in a previous decision on this same statute (*The Citizens Insurance* v. *Parsons* (3)) their Lordships recommended that, "in performing the difficult duty of determining such questions, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon the interpretation of the statute than is necessary for the decision of the particular question in hand."

The appellants contended that the Legislature of Ontario had no power to pass any Act to regulate the liquor traffic; that the whole power to pass such an Act was conferred on the Dominion Parliament, and consequently taken from the Provincial Legislature, by section 91 of the British North America Act, 1867; and that it did not come within any of the classes of subjects assigned exclusively to the Provincial Legislatures by section 92. The class in section 91 which the Liquor Licence Act, 1877, was said to infringe was No. 2, "The Regulation of Trade and Commerce," and it was urged that the decision of this board in *Russell* v. *The Queen* (4) was conclusive that the whole subject of the liquor traffic was given to the Dominion Parliament, and consequently taken away from the Provincial Legislature. It appears to their Lordships, however, that the decision of this tribunal in that case has not the effect supposed, and that, when properly considered, it should be taken rather as an authority in support of the judgment of the Court of Appeal.

The sole question there was, whether it was competent to the Dominion Parliament, under its general powers to make

laws for the peace, order and good government of the Dominion, to pass the Canada Temperance Act, 1878, which was intended to be applicable to the several provinces of the Dominion, or to such parts of the provinces as should locally adopt it. It was not doubted that the Dominion Parliament had such authority under section 91, unless the subject fell within some one or more of the classes of subjects which by section 92 were assigned exclusively to the Legislatures of the provinces.

It was in that case contended that the subject of the Temperance Act properly belonged to No. 13 of section 92, "Property and Civil Rights in the Province," which it was said belonged exclusively to the Provincial Legislature, and it was on what seems to be a misapplication of some of the reasons of this board in observing on that contention that the appellant's counsel principally relied. These observations should be interpreted according to the subject-matter to which they were intended to apply.

Their Lordships, in that case, after comparing the Temperance Act with laws relating to the sale of poisons, observe that "Laws of this nature designed for the promotion of public order, safety or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of Parliament to make laws for the order and good government of Canada."

And again: "What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with, and though incidentally the free use of things in which men may have property is interfered with, that incidental interference does not alter the character of the law."

And their Lordships' reasons on that part of the case are thus concluded: "The true nature and character of the legislation in the particular instance under discussion must always be determined, in order to ascertain the class of subject to which it really belongs. In the present case it appears to their Lordships, for the reasons already given, that the matter of the Act in question does not properly belong to the class of subjects 'Property and Civil Rights,' within the meaning of sub-section 13."

It appears to their Lordships that *Russell* v. *The Queen* (4), when properly understood, is not an authority in support of the appellant's contention, and their Lordships do not intend to vary or depart from the reasons expressed for their judgment in that case. The principle which that case and the case of the *Citizens Insurance* v. *Parsons* (3) illustrate is, that subjects which in one aspect and for one purpose fall within section 92, may in another aspect and for another purpose fall within section 91.

Their Lordships proceed now to consider the subject-matter and legislative character of sections 4 and 5 of the Liquor Licence Act of 1877, c. 181, Revised Statutes of Ontario. That Act is so far confined in its operation to municipalities in the province of Ontario, and is entirely local in its character and operation. It authorises the appointment of licence commissioners to act in each municipality, and empowers them to pass, under the name of resolutions, what we know as by-laws, or rules to define the conditions and qualifications requisite for obtaining tavern or shop licences for sale by retail of spirituous liquors within the municipality; for limiting the number of licences; for declaring that a limited number of persons qualified to have tavern licences may be exempted from having all the tavern accommodation required by law, and for regulating licensed taverns and shops; for defining the duties and powers of licence inspectors, and to impose penalties for infraction of their resolutions. These seem to be all matters of a merely local nature in the province, and to be similar to, though not identical in all respects with, the powers then belonging to municipal institutions under the previously existing laws passed by the local Parliaments.

Their Lordships consider that the powers intended to be conferred by the Act in question, when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local cha-

racter for the good government of taverns, &c., licensed for the sale of liquors by retail, and such as are calculated to preserve in the municipality peace and public decency, and repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce which belongs to the Dominion Parliament, and do not conflict with provisions of the Canada Temperance Act, which does not appear to have as yet been locally adopted.

The subjects of legislation in the Ontario Act of 1877, sections 4 and 5, seem to come within the heads Nos. 8, 15 and 16 of section 92 of the British North America Statute, 1867.

Their Lordships are therefore of opinion that, in relation to sections 4 and 5 of the Act in question, the Legislature of Ontario acted within the powers conferred on it by the Imperial Act of 1867, and that in this respect there is no conflict with the powers of the Dominion Parliament.

Assuming that the Local Legislature had power to legislate to the full extent of the resolutions passed by the Licence Commissioners, and to have enforced the observance of their enactments by penalties and imprisonment with or without hard labour, it was further contended that the Imperial Parliament had conferred no authority on the Local Legislature to delegate those powers to the licence commissioners or any other persons. In other words, that the power conferred by the Imperial Parliament on the Local Legislature should be exercised in full by that body, and by that body alone. The maxim "*Delegatus non potest delegare*" was relied on.

It appears to their Lordships, however, that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the Provincial Legislatures. They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a Legislature for Ontario, and that its Legislative Assembly should have exclusive authority to make laws for the province and for provincial purposes in relation to the matters enumerated in section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by section 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the Local Legislature is supreme, and has the same authority as the Imperial Parliament or the Parliament of the Dominion would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.

It is obvious that such an authority is ancillary to legislation, and without it an attempt to provide for varying details and machinery to carry them out might become oppressive, or absolutely fail. The very full and very elaborate judgment of the Court of Appeal contains abundance of precedents for this legislation entrusting a limited discretionary authority to others, and has many illustrations of its necessity and convenience. It was argued at the bar that a Legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into its own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each Legislature, and not for Courts of law, to decide.

Their Lordships do not think it necessary to pursue this subject further, save to add that, if by-laws or resolutions are warranted, power to enforce them seems necessary and equally lawful. Their Lordships have now disposed of the real questions in the cause.

Many other objections were raised on the part of the appellant as to the mode in which the licence commissioners exercised the authority conferred on them, some of which do not appear to have been raised in the Court below, and others were

disposed of in the course of the argument, their Lordships being clearly of opinion that the resolutions were merely in the nature of municipal or police regulations in relation to licensed houses, and interfering with liberty of action to the extent only that was necessary to prevent disorder and the abuses of liquor licences. But it was contended that the Provincial Legislature had no power to impose imprisonment or hard labour for breach of newly created rules or by-laws, and could confer no authority to do so. The argument was principally directed against hard labour. It is not unworthy of observation that this point, as to the power to impose hard labour, was not raised on the rule *nisi* for the *certiorari*, nor is it to be found amongst the reasons against the appeal to the Appellate Court in Ontario.

It seems to have been either overlooked or advisedly omitted.

If, as their Lordships have decided, the subjects of legislation come within the powers of the Provincial Legislature, then No. 15 of section 92 of the British North America Act, which provides for "the imposition of punishment by fine, penalty or imprisonment, for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section," is applicable to the case before us, and is not in conflict with No. 27 of section 91; under these very general terms, "the imposition of punishment by imprisonment for enforcing any law," it seems to their Lordships that there is imported an authority to add to the confinement or restraint in prison that which is generally incident to it—"hard labour"; in other words, that "imprisonment" there means restraint by confinement in a prison, with or without its usual accompaniment, "hard labour."

The Provincial Legislature, having thus the authority to impose imprisonment with or without hard labour, had also power to delegate similar authority to the municipal body which it created, called the licence commissioners.

It is said, however, that the Legislature did not delegate such powers to the licence commissioners, and that therefore the resolution imposing hard labour is void for excess. It seems to their Lordships that this objection is not well founded.

In the first place, by section 5 of the Liquor Licence Act, the commissioners may impose penalties. Whether the word "penalty" is well adapted to include imprisonment may be questioned, but in this Act it is so used, for section 52 imposes on offenders against the provisions of section 43 a penalty of twenty dollars or fifteen days' imprisonment, and for a fourth offence a penalty of imprisonment with hard labour only. "Penalty" here seems to be used in its wider sense as equivalent to punishment. It is observable that in section 59, where recovery of penalties is dealt with, the Act speaks of "penalties in money." But, supposing that the "penalty" is to be confined to pecuniary penalties, those penalties may, by section 70, be recovered and enforced in the manner and to the extent that by-laws of municipal councils may be enforced under the authority of the Municipal Act. The word "recover" is an apt word for pecuniary remedies, and the word "enforce" for remedies against the person.

Turning to the Municipal Act, we find that, by section 454, municipal councils may pass by-laws for inflicting reasonable fines and penalties for the breach of any by-laws, and for inflicting reasonable punishment by imprisonment, with or without hard labour, for the breach of any by-laws, in case the fine cannot be recovered. By sections 400 to 402 it is provided that fines and penalties may be recovered and enforced by summary conviction before a Justice of the peace; and that, where the prosecution is for an offence against a municipal by-law, the Justice may award the whole or such part of the penalty or punishment imposed by the by-law as he thinks fit; and that, if there is no distress found out of which a pecuniary penalty can be levied, the Justice may commit the offender to prison for the term, or some part thereof, specified in the by-law. If these by-laws are to be enforced at all by fine or imprisonment, it is necessary that they should specify some amount of fine and some term of imprisonment.

The Liquor Licence Act then gives to the commissioners either power to impose a penalty against the person directly, or

power to impose a money penalty, which, when imposed, may be enforced according to sections 454 and 400–2 of the Municipal Act. In either case, the Municipal Act must be read to find the manner of enforcing the penalty, and the extent to which it may be enforced. The most reasonable way of construing statutes so framed is to read into the later one the passages of the former which are referred to. So reading these two statutes, the commissioners have the same power of enforcing the penalties they impose as the councils have of enforcing their by-laws, whether they can impose penalties against the person directly, or only indirectly as the means of enforcing money penalties. In either case, their resolution must, in order to give the magistrate jurisdiction, specify the amount of punishment. In either case, their resolution now under discussion is altogether within the powers conferred upon them.

Their Lordships do not think it necessary or useful to advert to some minor points of discussion, and are, on the whole, of opinion that the decision of the Court of Appeal of Ontario should be affirmed, and this appeal dismissed with costs, and will so humbly advise Her Majesty.

Solicitors—Bompas, Bischoff & Dodgson, for appellant; Freshfield & Williams, for respondent.

1883. Nov. 21.

EMERY AND OTHERS (*appellants*) *v.* G. B. CICHERO (*respondent*).

THE ARKLOW.

New Brunswick—Admiralty—Collision—Sailing Rule—Non-observance of—Party in Default.

Where there has been a departure from any important rule of navigation, and the absence of observance can by any possibility have contributed to a collision, the party in default cannot be excused.

This was an appeal from a decree of the Vice-Admiralty Court of New Brunswick.

The appellants were the owners of the barque *Arklow*; the respondents were the owners of the barque *Bunin*.

The respondents sued the appellants to recover damages in respect of a collision which took place between the two ships on the 30th of March, 1881.

The facts are stated in the judgment of their Lordships.

Myburgh, Q.C., and *Beaufort*, for the appellants.—The inability of the *Arklow* to see the *Bunin's* light caused or contributed to the collision. The respondents were bound to prove that the inability of the *Arklow* to see the *Bunin's* light could not have caused or contributed to the collision.

Hall, Q.C., and *Bucknill*, for the respondent. — The collision was solely due to the negligence of the *Arklow*. The *Bunin* before and at the time of the collision was carrying her proper regulation lights. The *Bunin* did not cause or contribute to the collision by neglect to carry proper lights.

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (1):—

The case presented on behalf of the *Bunin*, the complaining vessel below, was as follows: That on the 30th of March, 1881, as she was proceeding on a voyage from Havre to Baltimore, at two o'clock in the morning, the weather being dark but clear and the wind from the north-west, she was steering a course south-west by west-half-west close hauled on the starboard tack; that her lights were properly burning; and that she was proceeding at the rate of 6½ knots an hour, when the red light of a ship, which proved to be the *Arklow*, was seen on the starboard bow; that she, the *Bunin*, kept her course, but that the *Arklow*, by some unaccountable mismanagement, as it is stated, ran into the *Bunin*, striking her about the fore rigging on the starboard side with her stern.

On the other hand, for the *Arklow* it was alleged that she was steering a course east by south-half-south, the wind being in the north, when a vessel was seen a point and a half on her port bow shewing no lights whatever; that she was thought

(1) Lord FitzGerald, Sir Barnes Peacock, Sir Robert P. Collier, Sir James Hannen and Sir Arthur Hobhouse.

to be going the same way as the *Arklow*, but that, after examination through the glass, and watching her for some appreciable time, it was discovered that she was approaching the *Arklow* under a starboard helm; that then the *Arklow's* helm was put hard aport and her after sails taken off.

In confirmation of the statement that there were no lights visible upon the *Bunin*, it is alleged and stated by several witnesses that a green light was seen moving upon the *Bunin* just before the collision; and in confirmation of the statement that the *Bunin* did not keep her course, but approached under a starboard helm, it is stated that her spanker jibed from port to starboard—it is said, indeed, just before the collision.

Now, in the circumstances alleged on the one side and on the other, it was undoubtedly the duty of the *Bunin* to keep her course, and it was primarily the duty of the *Arklow* to keep clear; but the *Arklow* alleges, by way of excusing herself for not having kept clear, that there was no light visible on the *Bunin*, and that it was therefore impossible to know in what direction she was sailing, and therefore impossible to take measures for the purpose of preventing the collision with her.

The first question of importance in the case is whether or not the lights of the *Bunin* were burning for any serviceable purpose. On this point the learned Judge in the Court below, after consulting the assessors, says: "I consider the point whether the *Bunin* carried proper lights left in so much doubt by the conflict of evidence, that I am of opinion that the lights of the *Bunin* were not fairly visible to the *Arklow*"; and then he goes on to deal with the case upon that footing. The peculiar language which is used by the learned Judge about their not being fairly visible may possibly have reference to the evidence which has been given that a green light was seen, not in its proper place, but moving on the *Bunin*, immediately before the collision. Their Lordships agree in the view which was taken by the learned Judge below upon this point that the lights of the *Bunin* were not in such a position as to be visible to those on board the *Arklow*, and that those on board the *Bunin* are responsible for that departure from the proper rules of navigation.

Their Lordships arrive at this conclusion upon an examination of the evidence on the one side and on the other. It is very much to be regretted that the Court below was obliged to rely solely upon affidavits, which, from their language and general contents, it is pretty plain were drawn by somebody with a view to the supposed facts of the case, and were then laid before the witnesses for the purpose of getting their evidence, and leaving them, as it were, to take exception to anything which they found in those statements. Thus, all the witnesses but one on behalf of the *Bunin* say, in general terms, that lights were burning according to the regulation; but there is only one of them who speaks to the fact of his having actually seen that the lights were burning at the time of the collision, and that is the witness Lazzarini, whose duty it appears to have been to light and trim the lamps, which he says he had done at eight o'clock. He does, indeed, say that when he was called on deck by hearing that something wrong had happened he did see that the lights were burning. On the other hand, the witnesses for the *Arklow* all agree that there was no light visible on the *Bunin*; and they make that statement with certain particularity which impresses their Lordships in favour of their statements as against the general statements, with the exception mentioned, of those on board the *Bunin*. For instance, it is stated that, the vessel having been reported by the look-out man, and the mate and another of the crew who was with him having seen the vessel looming in the distance, the mate fetched the captain's glasses for the purpose of examining it more carefully. That is a particularity which cannot be disregarded, except on the supposition that the mate and the witness who confirms him are deliberately stating that which they must know to be false, and going much further than a mere assertion that they were doing their duty. In addition to that, there are several witnesses who say that they saw a green light moving on the

vessel immediately before the collision, as though the green light had, either for the purpose of being trimmed or from some other accident, not been in its place, but that when the vessel was found to be approaching another the green light was being moved from one place to another.

Their Lordships therefore come to the conclusion that the lights of the *Bunin* were not properly burning. But the learned Judge below says that this question of the lights is immaterial when it appears that their absence did not cause the collision. On this part of the case their Lordships are unable to concur with the judgment of the learned Judge below. The principle in cases of this kind, where there has been a departure from an important rule of navigation, is this, that if the absence of due observance of the rule can by any possibility have contributed to the accident, then the party in default cannot be excused. On this point their Lordships can entertain no doubt that the absence of proper lights must have occasioned an entire change in the course of events which followed upon the *Bunin* being visible to the *Arklow*. Without those lights the statement made by the witnesses on board the *Arklow* commends itself at once to credence that they did not know in what direction this vessel was going, and that it took an appreciable time before a judgment could be formed upon that subject, during the whole of which time it must have remained a matter of pure chance whether it would be right to take one manœuvre or another. Their Lordships are therefore of opinion that the *Bunin* was clearly to blame, and that she was to blame in a matter which makes her responsible.

The only question that remains, therefore, is whether or not it has been shewn that the *Arklow* was also to blame. It lies on the *Bunin*, which is shewn to have been in default, to establish, to the satisfaction of the tribunal that has to determine it, that the *Arklow* was in fault. Now, on this part of the case it is to be observed that the time which has to be dealt with is very short. The vessels were approaching at a speed which would bring them together at the rate of a mile in five minutes. Reference has been made to the marginal note upon the diagram furnished by the *Arklow*, in which it is said that when first seen the *Bunin* was about six cables distance, which would be a distance of 1,200 yards. One of the witnesses for the *Arklow* says that the *Bunin* was seen about four minutes before the collision. It is obvious that these statements as to time and distance cannot be dealt with as exact computations, but only indicate the rough conjectures which the witnesses were able to make at the time. But it is obvious that some space of time must have been occupied in fetching the glasses, which would diminish the period of time with which we are dealing. Secondly, it is stated, and no reason to doubt it is suggested, that the helm of the *Arklow* had been ported before the collision—that is to say, that a step had been taken for the purpose of avoiding the approaching danger; and Nilson, one of the witnesses, says that the *Arklow* had under her port helm come round two points, and that this had been done when it was seen that the *Bunin* was approaching under a starboard helm. It is clear, therefore, that we have but a very short space of time indeed during which the hesitation on the part of those on the *Arklow* was manifested as to what course they should take. Considering the difficulty occasioned by the absence of lights on board the *Bunin*, which prevented the possibility of seeing what course she was steering, their Lordships are of opinion that it has not been established that there was negligence on the part of those on board the *Arklow* in not sooner porting the helm, as it is clear she had to some extent done before the collision.

Another point has been discussed, which was not dealt with in the Court below, and that is whether or not the *Bunin* kept her course. Her witnesses allege that she did keep her course. On the part of the *Arklow* it is alleged that she came round under a starboard helm, and so came down upon the *Arklow*. In support of that statement it is alleged that she jibed; and it has been argued that credence ought not to be given to that statement, because it is said the *Arklow* had gone off only to the extent of half a point, while it is represented that

the *Bunin* had got round a great number of points—the exact number it is not necessary to specify, but so as to bring her head pointing south before it would be possible that she would jibe. It is to be observed, however, that the two periods of time that were referred to by Mr. Hall are not properly to be compared, because the evidence on the part of the *Arklow* is that it was discovered that the *Bunin* was, to use the expression of the witnesses, coming down upon them under a starboard helm, and that it was apparently which shewed the direction which the *Bunin* was taking, and it was then, after that had been seen, that the helm of the *Arklow* was ported. There was therefore some time before the porting of the helm during which the starboarding of the helm of the *Bunin* had taken place. But, further than this, it is to be observed that where a collision of this kind occurs, the exact succession or concurrence of events is not accurately noted by the witnesses; and it may well be that the jibing of the spanker, which is referred to by the witnesses as taking place immediately before the collision, may in fact have taken place at the time of the collision, and in consequence of the collision, by the head of the *Bunin* being driven sharply round.

On the whole, their Lordships are of opinion that it has been esablished that the *Bunin* was to blame, and that it has not been established that the *Arklow* was to blame; and their Lordships will therefore humbly advise Her Majesty that the decision of the Court below should be reversed, with costs.

Solicitors—Stokes, Saunders & Stokes, for appellants; T. Cooper & Co., for respondent.

1883. Nov. 27. } DUCONDU AND OTHERS (*appellants*) *v.* DUPUY (*respondent*).

Canada—Timber Licence—Prior Licence—Warranty on Sale—Statutes of Canada, 12 *Vict. c.* 30.

By the law of Canada, if a timber licence is found to cover ground already occupied by a prior licence, the subsequent licence is, to the extent of the prior licence, void.

A contract for the sale of a timber licence contained a guarantee "de tous troubles généralement quelconques":—

Held, *that such guarantee did not render the vendor liable in damages to the vendee upon the latter being evicted by the holder of a prior licence.*

This was an appeal from a judgment of the Supreme Court of Canada.

An action was brought by the respondent, as assignee of one Cushing, to recover damages for a breach by the appellants of a covenant for quiet enjoyment.

The facts were as follows:—

The appellants were the representatives of one Scallon deceased, who held certain licences from the Crown for "timber limits," situated on the banks of the River L'Assomption and its tributaries the Black River and River Ducharme.

The rights of a licence of "timber limits" are regulated by the Canadian statute 12 Vict. c. 30, which provides "that if, in consequence of any incorrectness of survey, or other error or cause whatsoever, a licence shall be found to cover grounds already included in a licence of a prior date, the licence last granted shall become null and void, in so far as it may interfere with the one previously issued, and the holder or proprietor of the licence so rendered null and void shall have no claim whatsoever upon the Government for indemnity or compensation by reason of such cancellation."

By deed dated the 10th of July, 1858, Scallon contracted to sell to one Peck a sawmill situated on L'Assomption River, and "all the right and title obtained by the seller from the Crown to certain timber limits situated on the banks of L'Assomption River and its tributaries the Black River and River Ducharme," as therein enumerated and numbered. Thirteen li-

cences for different areas of timber limits were mentioned in the deed, amounting in the whole to 256 square miles, comprising, amongst others, "No. 97, 25 miles, and No. 98, 25 miles, situated on L'Assomption River."

The interest of Peck became vested in Cushing, and by deed dated the 16th of March, 1865, the appellants granted the property to Cushing, "qu'en exécution avec promesse de garantir 'de tous troubles généralement quelconques' au dit Cushing," the property and rights mentioned in the agreement of 1858.

Nos. 97 and 98 had not been granted to Scallon. In lieu of the limits described under licences Nos. 97 and 98 licences Nos. 25 and 26 were granted in 1866 to the appellants, and by them assigned to Cushing by deed of the 22nd of October, 1866.

In January, 1869, one Hall claimed to be the rightful licensee of Nos. 25 and 26. Cushing gave way to the demand of Hall, abandoned possession of Nos. 25 and 26, and brought this action for damages against the appellants.

The cause was heard before the Superior Court of the district, and judgment was, on the 15th of January, 1878, given in favour of the appellants.

The respondent appealed from this judgment to the Court of Queen's Bench of the Province, and on the 17th of September, 1880, that Court affirmed the judgment of the Superior Court.

The respondent appealed from these judgments to the Supreme Court of Canada, and on the 13th of December, 1881, judgment was delivered and the appeal was allowed, and the judgments of the Court of Queen's Bench and of the Superior Court were reversed.

From this judgment this appeal was brought.

K. Digby, for the appellants.—The warranty against disturbance was invalid, inasmuch as the deeds of 1865 and 1866 were acts of recognition of the promise of sale of the 10th of July, 1858, and the warranty relied on was in excess of any obligation contained in the promise of sale. There was no consideration for such warranty. The guarantee did not extend to the case of disturbance by a person claiming a portion of the limits assigned by the deed under a prior licence.

Fullarton, for the respondent. — The appellants were bound to give a good and valid title to the fifty miles of limits ceded and transferred by the deed of 1866. They failed to do so. The appellants were bound to put the purchaser in actual possession of the fifty miles of limits. They failed to do so. Without an express warranty, the appellants as vendors were bound to warrant the buyer against eviction of the whole or any part thereof by reason of any right existing at the time of the sale thereof; but there was an express warranty. He referred to the Civil Code of Lower Canada, ss. 1491–94, 1508, and to *Troplong de la vente*, par. 264.

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (1):—

On the 10th of July, 1858, Edward Scallon, who is the predecessor in title of the appellants, contracted with one Benjamin Peck, the predecessor in title of the respondent, to sell to him certain property called timber limits. The nature of a timber limit is this:—Annual licences are granted by the Commissioner of Crown Lands to take possession of certain areas of land, to cut timber within those areas or limits. There is an express provision in the statute that if any licence is found to cover ground already occupied by a prior licence, the subsequent licence shall to that extent be null and void. Such being the nature of the property, Scallon contracted to sell all the right and title obtained by him from the Crown. The purchase-money was to be paid by instalments, and when the last instalment was paid the conveyance was to be completed by Scallon. The money was paid; and Scallon being dead, his heirs, the present appellants, executed a deed, dated the 16th of March, 1865, for the purpose of completing the conveyance to Cushing, in whom Peck's interest was then vested. In that deed it is stated that they are acting in execution of the prior contract; and they convey and release, with a guarantee against disturbance, all the immovable property and

(1) Sir Barnes Peacock, Sir Montague Smith and Sir Arthur Hobhouse.

rights which Scallon had promised. Then they proceed to describe it; and they describe it in precisely the same terms as are used in the contract of 1858. The property so described is said to be comprised in thirteen different licences, which purport to convey a title to an area of 256 miles. Among those licences are two, numbered 97 and 98, which purport to convey title each to an area of twenty-five miles on the Assumption River; and the heirs of Scallon declare that the licences have been renewed up to that time by Peck and his representatives. It turned out that in point of fact Nos. 97 and 98 had not been renewed, and it seems doubtful whether they were in existence at the time of the contract of 1858. Mr. Fullarton has argued his case on the hypothesis, which he takes as most favourable to himself, that they were not in existence at that time. On that discovery the parties came together again, and the heirs of Scallon agree to make good the loss accruing to the successors in title of Peck by the non-existence of licences 97 and 98. The arrangement made by them is contained in a deed of the 22nd of October, 1866, executed by one McConville, who for the present purpose is assumed to be the lawful agent of the appellants. The language used by the parties in that deed is, as stated in English, to the following effect:—After referring to the prior transactions, they say, "In virtue of that deed"—that is, the deed of 1858—"Scallon was bound to sell 256 miles of limits for cutting wood on Crown lands; and as there is found a deficit of fifty miles to complete the said quantity of 256 miles granted to Cushing, McConville, in the name of his principals, desiring to fill up the deficit which has been found, has by these presents granted and conveyed, with warranty against all disturbances generally, whatsoever they may be, to Cushing, the said quantity of fifty miles of limits on the said River Assumption, described as follows in the English tongue." The description is contained in two other licences, Nos. 25 and 26. Licence 25 is in these terms:—"Commencing at the upper end, limit No. 94 on the south-west side of L'Assomption River, granted to late Edward Scallon, and extending five miles on said river and five miles back from its banks, making a limit of twenty-five square miles, not to interfere with limits granted or to be renewed in virtue of regulations." *Mutatis mutandis*, licence 26 is in the same terms. The deed states that McConville has, for his principals, paid the sum of 500 dollars to Cushing, on account generally of all claims which Cushing may have against the heirs of Scallon, and Cushing further declares that by reason of this deed he has nothing to claim, for any cause or reason whatever, against the heirs of Scallon; and a general release is given. McConville on his part gives a general release to Cushing for all claims by the heirs of Scallon.

It is on that deed that the present question arises. The difficulty which has arisen is this: that when the grantee, Cushing, came to work on the limits contained in the licences 25 and 26 he was stopped by a man of the name of Hall, who claimed to be possessed of the same land in virtue of a prior licence from the Crown. There has been a great deal of controversy as to whether the interference by Hall has been properly proved in this suit; but, for the purposes of the present decision, all that part of the case is assumed in favour of the respondents. Cushing could not get the benefit of all the land described in licences 25 and 26, by reason of a prior grant to Hall. Cushing accordingly, or his assignee, Dupuy, the present respondent, sues the heirs of Scallon upon the warranty which he alleges that they have given for fifty square miles of timber limits. The question is whether the appellants have given a warranty for those fifty miles of limits absolutely, or only a warranty for the licences which purport to give a title to the fifty square miles. It is a question of very considerable difficulty. The Courts in Montreal have taken one view, in favour of the appellants; and the majority of the Supreme Court has taken the other view, in favour of the respondent.

There has been a good deal of question, both in the Courts below and at the bar here, whether it is proper to go behind the deed of October, 1866. It is quite plain what the course of a Court of justice must be. In one sense we cannot go behind the deed of 1866—that is to say, the rights of the parties must be regulated by the construction of that deed, and of that deed

alone. In another sense we have to go behind it, because the deed itself refers to prior transactions. It professes to be founded upon the liability arising out of those prior transactions; and a Court cannot properly construe the deed without ascertaining what the position of the parties was at the time when they came to execute it. Now the position of the parties appears to their Lordships to be this: Scallon contracted to sell his right and title to the thirteen licences, which purport to contain 256 square miles. He was not liable to make good a title to the 256 square miles any further than the licences themselves made a title to them. But he was liable to have and to deliver the licences which he purported to sell. In point of fact, he had not got two of those licences; and when that fact is discovered his heirs come to make up the deficit, as they call it "*compléter le déficit*"—that is to say, to do that which Scallon was bound to do. At that time Scallon was bound to make good in some way the loss sustained by the non-existence of licences 97 and 98.

What then do the parties do? They make up the deficit by assigning two other licences. They call it, "fifty miles of limits described as follows." Even taking the word "limits" to be an ambiguous term, their Lordships are of opinion that "limits described as follows" must be taken to indicate the thing which is sold according to the description which is given. Into that description is imported the condition that the licence sold is not to interfere with limits granted or to be renewed in virtue of regulations. Therefore the two licences which formed the subject of the assignment of 1866 are to be taken exactly as the two missing licences which formed the subject of the contract of 1858 were taken, namely, as conveying only such right, title and interest as the vendors had obtained from the Crown. Now the guarantee can only extend to the thing that is sold, the very subject of the assignment. If the licences 25 and 26 were not forthcoming, or if there was any defect in the title of the heirs of Scallon to those licences, the guarantee might have some operation; but the licences are forthcoming and have been handed over, and there is no guarantee against a deficiency by reason of a prior grant.

The result is, that, assuming the respondent to be right in all the issues raised by him with respect to the breach of the alleged guarantee, their Lordships are of opinion that no guarantee exists to cover that alleged breach.

Under these circumstances, their Lordships will humbly advise her Majesty that the decree of the Supreme Court be reversed and the decrees of the lower Courts restored. The costs of the appeal will follow the result.

Solicitors—Ingle, Cooper & Holmes, for appellants; Ashurst, Morris, Crisp & Co., for respondent.

1883. Nov. 24. JAMES HENRY THOMAS (*appellant*) *v.* FREDERICK SHERWOOD AND OTHERS (*respondents*).

Western Australia—Crown Grant—Re-entry for Public Purposes—Railway Act, 1878, 42 *Vict. c.* 31. *ss.* 14 *and* 16—*Compensation.*

The Railways Act of Western Australia, 1878, 42 *Vict. c.* 31, *enables the Crown, after notice, to take land for railway purposes, making compensation to owners.*

A Crown grant of land contained a proviso for re-entry for public purposes without compensation:—Held, *that a notice by the Crown to such a grantee to take land must be deemed to be in respect of the proviso contained in the grant and not in pursuance of the Act, and that therefore the grantee was not entitled to compensation.*

This was an appeal from a judgment of the Supreme Court of Western Australia.

The respondents, the holders of a Crown grant of certain land, brought an action against the appellant, who was the Commissioner of Railways in the colony appointed under the Railways Act, 1878, 42 Vict. c. 31, to recover compensation under that Act.

Thomas v. *Sherwood.*

The facts were as follows:—

By grant dated the 5th of March, 1844, the Crown granted to one Mary Hutton and her heirs all that piece or parcel of land situate and being on the right bank of the Swan River, in the colony of Western Australia, containing 968 acres, to have and to hold the said tract or parcel of land unto the said Mary Hutton, her heirs and assigns, for ever, yielding and paying for the same one peppercorn of yearly rent, subject to a proviso that it should at all times be lawful for Her Majesty, her heirs and successors, or for any person or persons acting in that behalf by her or their authority, to resume and enter upon possession of any part of the said lands, which it might at any time, by Her Majesty, her heirs or successors, be deemed necessary to resume, for making roads, canals, bridges, towing paths or other works of public utility or convenience, and such lands so resumed to hold to Her Majesty, her heirs and successors, as of her or their former estate without making to the said Mary Hutton, her heirs and assigns, any compensation in respect thereof, so, nevertheless, that the lands to be resumed should not exceed one-twentieth part in the whole of the lands aforesaid, and that no such resumption be made of any lands upon which any buildings might have been erected, or which might be in use as gardens or otherwise for the more convenient occupation of any such buildings.

The respondents were the successors in title to the said Mary Hutton, and were at the date of the notice possessed as joint tenants for an estate of freehold of the said tract of land.

By section 12 of the Railways Act, 1878, the commissioner is authorised to enter upon and take for the purpose of the railway any such land along the line, or within any lawful deviation from such line, over which the railway is authorised to be constructed, as may, in the judgment of the commissioner, be necessary for the purpose, and to exercise certain other powers in the same section mentioned. And it is thereby provided that nothing in that section should be deemed to apply to the waste lands of the Crown, or to in any way affect any right as to any land theretofore granted or otherwise disposed of by the Crown, reserved to Her Majesty the Queen, her heirs and successors, or any person or persons acting in that behalf by her or their authority, to do any of the acts or things by that section authorised to be done, and that nothing shall be deemed to be done in pursuance and by virtue of the powers by that section conferred which, if that Act had not been passed, might lawfully have been done by Her Majesty the Queen, her heirs or successors, or any person or persons acting in that behalf by her or their authority under any such reservation as aforesaid.

By section 14 of the Act it is provided that in all cases in which any land is taken, entered upon, or used in pursuance and by virtue of the powers by the said 12th section conferred, full compensation shall be made to the owner or owners of such land.

By section 16 it is enacted that any person whose land is taken, entered upon or used in pursuance and by virtue of the provisions of that Act, or whose land is resumed, entered upon or used for the purpose of a railway by Her Majesty, her heirs or successors, or any person acting under her or their authority, under any reservation of right as thereinbefore mentioned, and who shall consider himself entitled to compensation in respect of such land being taken or resumed, entered upon or used, shall send in to the commissioner a notice in writing in the form therein mentioned, setting forth the value of his interest in such land and the amount of compensation which he claims in respect of the premises; and if the commissioner shall be satisfied as to the title of the claimant to such land, and as to his right to recover compensation in respect of such land being taken or resumed, entered upon or used, as aforesaid, and as to the amount of compensation claimed by him, as aforesaid, he shall with the approval of the Governor in Executive Council pay such amount to the claimant. And if he shall be satisfied as to the title and right to compensation, but thinks the amount of compensation claimed excessive, then such proceedings are to follow as therein mentioned. And if the commissioner shall not be satisfied as to the title of the

claimant to such land, or as to his right to compensation in respect of the same being taken or resumed, entered upon or used, as aforesaid, he shall give notice to such person, according to the form therein mentioned, that he repudiates his claim.

By the Eastern Railway Act, 1878, a railway, called the Eastern Railway, from Fremantle to Guildford was authorised. The line of that railway passed over a portion of the respondents' land.

On or about the 7th of May, 1879, the appellant, as such commissioner as aforesaid, gave the respondents a notice in writing of that date, which was in the words and figures following :—

" In the matter of the Railways Act, 1878, and of certain land intended to be taken and resumed for the purposes of the Eastern Railway.

" To Messrs. F. & H. Sherwood, of Perth, in the colony of West Australia.

" Take notice that it is the intention to take for the purposes of the Eastern Railway the land in the Swan District whereof you are the owners :

Number		Quantity intended to be taken
On Plan and Book of Reference	In the Survey Office	
No. 150.	Location X.	A. R. P. 4 3 27

" Dated this 7th day of May, 1879.

" J. H. Thomas,

" Commissioner of Railways."

The appellant also gave notice in the *Government Gazette* that such land would, with the approval and consent of the Governor in writing, be taken on a day named in the notice.

The approval and consent of the Governor in writing was obtained by the appellant, as such commissioner, to take the said land, under the provisions of the Railways Act, 1878.

The respondents sent to the appellant a notice setting forth their interest in the land, and the amount of compensation which they claimed.

The appellant gave notice to the respondents that they had failed to satisfy him as to their right to compensation, and he accordingly repudiated the claim.

By consent of the parties, and pursuant to an order of the Court, a Special Case was stated for the opinion of the Court whether the respondents were entitled to recover compensation.

The case came on for argument before the Chief Justice, and on the 13th of July, 1881, judgment was ordered to be entered for the respondents.

From this judgment the appeal was brought.

The Solicitor-General (*Sir F. Herschell*) and *J. G. Wood*, for the appellant.—The Crown was entitled to exercise the right of resumption reserved by the deed of grant. The right of resumption is not superseded, taken away or interfered with by the provisions of the Railways Act, 1878, but is expressly recognised therein. The course adopted by the appellant, in order to acquire the land, was proper, even if not necessary, whether such acquisition was effected by a taking by compulsory purchase or by resumption under powers reserved. The appellant did not in anywise waive or release, nor had he any authority to waive or release, the right of resumption. The powers conferred by the Act were cumulative, and in addition to all other powers vested in the appellant.

The respondents did not appear.

SIR BARNES PEACOCK delivered the judgment of their Lordships (1) :—

The question in this appeal is whether, some land of the plaintiffs having been taken by the Commissioner of Railways for Western Australia for the purposes of a railway, the plaintiffs are or are not entitled to compensation.

(1) Lord FitzGerald, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

Thomas v. *Sherwood.*

The land in question is parcel of an estate of 968 acres, granted by the Crown to Mary Hutton, the predecessor in title of the plaintiffs, in fee, at a peppercorn rent, on the 5th of March, 1844. This grant was subject to a proviso which, so far as is material in the present case, is as follows:—"Provided, nevertheless, that it shall at all times be lawful for Us, Our heirs and successors, or for any person or persons acting in that behalf, by Our or their authority, to resume and enter upon possession of any part of the said lands, which it may at any time, by Us, Our heirs or successors, be deemed necessary to resume, for making roads, canals, bridges, towing paths or other works of public utility or convenience, and such lands so resumed to hold to Us, Our heirs and successors, as of Our or their former estate, without making to the said Mary Hutton, her heirs or assigns, any compensation in respect thereof, so nevertheless that the lands to be resumed shall not exceed one twentieth part in the whole of the lands aforesaid, and that no such resumption be made of any lands in which any buildings may have been erected, or which may be used as gardens or otherwise for the more convenient occupation of any such buildings."

On the 24th of July, 1878, an Act was passed authorising the construction of a railway from Fremantle to Guildford in the colony.

On the same day a general Act was passed consolidating and amending previous Acts relating to railways, which Act was to be deemed incorporated with and form part of any special railway Act.

The following are the sections of the latter Act material to the present case:—

Section 5 gives the Government power to appoint a Commissioner of Railways.

Section 6 authorises the commissioner, with the approval and consent of the Governor testified in writing, to enter into all contracts relative to the railway, and to do all other acts which he is authorised by the Act to perform.

Section 12 authorises the commissioner, or any person acting under his authority, to enter upon and take, for the purpose of the railway, "any land along the line, or within any lawful deviation from such line, over which the railway is authorised to be constructed, as may, in the judgment of the commissioner, be necessary for the purpose." At the end of the section is this proviso:—"That nothing in this section contained shall be deemed to apply to the waste lands of the Crown, or to in any way affect any right as to any land heretofore granted or otherwise disposed of by the Crown, reserved to Her Majesty the Queen, her heirs and successors, or any person or persons acting in that behalf, by her or their authority to do any of the acts or things by this section authorised to be done; and *nothing shall be deemed to be done in pursuance of and by virtue of the powers by this section conferred which, if this Act had not been passed, might lawfully have been done by Her Majesty the Queen, her heirs and successors, or any person or persons acting in that behalf, by her or their authority, under any such reservation as aforesaid.*"

Section 13 provides for notice being given when land is taken under the preceding section.

Section 14 runs thus: [his Lordship read sections 14 and 16.]

Section 31 enables the claimant to bring an action to recover compensation if the commissioner repudiates his claim.

The appellant, who has been duly appointed Commissioner of Railways, gave to the plaintiff the following notice: [His Lordship read the notice of the 7th of May, 1879.]

The respondents gave to the commissioner the following notice, in accordance with Form B given in the schedule to the Act:—

"Form B.

"In the matter of the 'Railways Act, 1878,' and of 'certain land' taken for the purposes of the Eastern Railway.

"To the Commissioner of Railways, Western Australia, &c., &c., &c.

"Sir,—We have the honour to inform you that we are the owners of certain land, described in the schedule 'A' as Swan Location X, situate on the West Guildford Road, which has been taken for the purposes of the Eastern Railway.

"We enclose the following title-deeds, shewing our interest in the said lands.

"We consider that we are entitled to

compensation in respect of the said land, and we claim as full compensation for taking of the same, and including all buildings and fences thereon, and as damages for all injury done to the adjoining land belonging to us, by severance or otherwise, the sum of 408*l.* 7*s.* 9*d.*, which sum we hereby declare to be our full claim in respect of matters aforesaid.

"We have the honour to be, Sir,

"Your obedient servants,

"F. and H. Sherwood."

The appellant thereupon gave to the respondent the following notice, in accordance with Form D in the schedule :—

"Form D.

"In the matter of 'The Railways Act, 1878,' and of certain land taken for the purposes of the Eastern Railway.

"Sir,—With reference to your letter of the day of , in which you inform me that you are the owners of certain land described in your said letter, which land has been taken for the purpose of the Eastern Railway, and in which you make a claim of 408*l.* 7*s.* 9*d.*, as compensation for the land so taken, including all buildings and fences thereon, and as damages for all injury done to the adjoining land belonging to you, by severance or otherwise, I have now the honour to inform you, having submitted your title of the said land and your claim to compensation, as aforesaid, to the proper legal authority, that you have failed to satisfy me as to your right to compensation as set forth in your said letter, and I accordingly, pursuant to the provisions of 'The Railways Act, 1878,' repudiate your said claim.

"I have the honour to be,

"Your obedient servant,

"Jas. Hy. Thomas, Commissioner of Railways.

"Swan Location X. (Claim 64.)

"Messrs. F. and H. Sherwood, Perth."

Thereupon the plaintiffs brought an action, in which, by consent, a Special Case was stated for the opinion of the Court.

The Case finds that the land in question is "country land, and not town or suburban land," and that, although a portion of the whole land granted had been before resumed, that portion, together with that now taken, does not amount to one twentieth of the whole.

On the Special Case, judgment was given by the Chief Justice for the plaintiffs, and against this judgment the defendant now appeals.

Their Lordships regret that the Chief Justice has not complied with their Lordships' order of the 12th of February, 1845, directing Judges to forward to this Board the reasons on which their judgments are founded. Under the special circumstances of the case, the Solicitor-General was permitted to read an extract from a letter by the Chief Justice to the Governor of the colony, purporting to give some of the reasons for his judgment. This extract and "the points" of the respective parties are the only materials from which their Lordships are able to conjecture how the case was presented to the Court, and how the Court dealt with it.

They understand the Chief Justice to state that there was no question of the right of the Crown to resume the land, if that right was properly exercised; but that, in his opinion, it was not properly exercised, and that the notice given by the commissioner must be taken to have been given under the 12th section of the Act.

No mode of procedure appears to be prescribed by the law of the colony for the taking by way of resumption of lands granted by the Crown; but, whether a notice previous to the taking them of the intention to do so be or be not strictly necessary, it is manifestly proper and convenient.

The notice of the 7th of May, 1879, appears to their Lordships a notice which might lawfully and properly have been given by the Crown or its agent in the exercise of the power of resumption if the Act had not been passed, not the less so because it may also be a good notice under the Act; if this is so, the words of the proviso to the 12th section are express, that the giving it shall not be deemed to be done in pursuance of or by virtue of the powers conferred by that section. If it is not a notice under section 12, section 14, the only section giving compensation, does not apply. Nor does section 16 help the plaintiffs. That section was manifestly necessary in contemplation of two possible cases—first, where the land, or a portion of it, claimed in the notice should be town land, where-

upon there would be a right to compensation, not under the Railway Act, but by virtue of the terms of the grant applicable to town lands; secondly, where the land, or a portion of it, should not be resumable for any reason, either because it had been built upon, or was used as garden for the more convenient occupation of buildings, or because one twentieth of the land had been before resumed; in either of which cases the notice could not have been lawfully given if the Act had not passed, and would therefore properly be treated as a notice under the Act.

But the land in question is not town, or even suburban land, nor has it been built upon or occupied as gardens attached to buildings. It is true that the notice following Form B claims compensation for the land, "including all buildings and fences thereon," but in the Special Case there is no allegation of its having been built upon, and no inference that it has been can be drawn from the description "country land, and not town or suburban land"; there is no trace of any claim to compensation on this ground in the plaintiffs' "points," and so much of the reasons of the judgment which was read to their Lordships intimated that the right of the Crown to resume, if properly exercised, was not questioned.

Further, it is stated in the Special Case that the quantity now resumed, added to that resumed before, is less than one twentieth of the whole. There is no ground for a contention raised in the plaintiffs' points that by the taking any portion, however small, the power of the Crown to resume is exhausted—it is a power to be exercised from time to time as occasion arises.

From these considerations it results—

1. That the land in question was land which the Crown had power to resume.

2. That the notice given was one which might lawfully have been given, by or on behalf of the Crown, in exercise of its powers of resumption.

3. That if so, such notice must not be deemed to have been given under section 12 of the Railway Act, the proviso of which has some appearance of being enacted for the express purpose of preventing claims such as the present being made.

4. That if so, the plaintiffs have no right to compensation.

The judgment was therefore wrong. Their Lordships will humbly advise Her Majesty that the judgment appealed against be reversed, and that judgment, with costs of the defence in the Court below, should be entered up for the appellant. There will be no costs of this appeal.

Solicitors—Sutton & Ommaney, for appellants.

1883. Nov. 24. ISAIE FRECHETTE (*appellant*) *v.* LA COMPAGNIE MANUFACTURIÈRE DE ST. HYACINTHE (*respondents*).

Canada—Province of Quebec—Easement—Servitude—Rights of Water—Riparian Owners—Code Civil of Lower Canada, ss. 501 *and* 503.

The Civil Code of Lower Canada, by section 549, *provides that "no servitude can be established without a title: possession even immemorial is insufficient for that purpose"; and, by section* 501, *that "lands on a lower level are subject towards those on a higher level to receive such waters as flow from the latter naturally and without the agency of man."*

The plaintiffs, being riparian owners of land and of a water-mill, complained that the defendants, who were riparian owners of land and of a water-mill on a lower level, had impeded the flow of water. It was proved that the plaintiffs had effected certain changes in the flow of the water:—Held, *that the burden of proof was on the plaintiffs that the existing flow of water was the same as the natural flow, or to shew title to the existing flow.*

This was an appeal from a judgment of the Court of Queen's Bench for Lower Canada, affirming a judgment of the Superior Court.

The appellant and respondents were the owners of land situated on the northern bank of the river Yamaska, and of certain

mills and machinery, moved by water-power, erected upon that river.

The action was brought by the respondents to compel the removal of an obstruction, which, as they alleged, the appellant had caused by raising a dyke or dam across the channel, by which the water of the river had theretofore escaped after leaving the respondents' property, thereby penning back the water upon the mills and water-wheels of the respondents and impairing their efficient working.

The Superior Court ordered that the obstruction in question should be lowered by twenty-two inches, and awarded the respondents damages; and this judgment was affirmed by a majority of the Court of Queen's Bench.

From this judgment the present appeal was brought.

The facts are stated in the judgment of their Lordships.

Matthews, Q.C., and *Fullarton*, for the appellant.—The action, being *en dénonciation de nouvel œuvre*, will not lie, being commenced after the completion of the work complained of. The action, being a possessory action on disturbance, and for repossession, within the meaning of section 946 of the Code of Procedure, is joined with the petitory claim founded in title, contrary to section 948 of the Code. The judgment affirmed the alleged title as well as the alleged possessory right. There was no *possession annale* of the servitude sought to be enforced in the action and actually enforced by the judgment. There was no title proved to the servitude within the meaning of the Code Civil of Lower Canada, sections 549–51. The evidence of title put forward by the respondents, and acted on by the Court, was irrelevant. The respondents' user of the stream is illegal, and contrary to the provisions of the Code Civil, sections 501 and 503. They referred to *Brown* v. *Gugy* (1) and to *Touillier, Droit Civil Français*, vol. 3, p. 549.

[LORD WATSON.—Their Lordships would hear the respondents as to the effect of statute 51 of the Consolidated Statutes, and as to the change in the course of the water.]

(1) 2 Moo. P.C. N.S. 341.

Bompas, Q.C., and *K. Digby*, for the respondents.—The respondents were proved to have been for more than a year and a day in possession of the free and unobstructed flow of the water below their property. The respondents were entitled to a free and unobstructed flow of water by prescription. The evidence, and the report of experts, prove that the dam recently erected by the appellant was an obstruction to the free flow of the water, and had caused, and would cause, substantial damage to the mills and water-wheels of the respondents. The action was an appropriate remedy for the prevention of such damage by the removal of the obstruction causing the same. The statute 19 and 20 Vict. c. 104 does not take away any rights which the respondents would otherwise have to maintain the present action. They referred to *Bickett* v. *Morris* (2), *Tapling* v. *Jones* (3), and to *Dalloz*, tit. "Servitude," c. iv. s. 1, vol. xi. p. 79.

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (4):—

The parties to this suit are owners of contiguous lands on the left bank of the river Yamaska; the plaintiffs, who are the respondents, being the owners of the upper lands, and the defendants, one of whom is the appellant, of the lower. The complaint is that the defendants have lately erected a barrier which prevents the water flowing in due course from off the land of the plaintiffs.

To understand the position of affairs it is convenient to refer to a plan put in by the defendants. Prior to the year 1878 matters stood as follows:—The whole river was traversed by a dyke, marked A, which conducted the water to a mill (No. 4) belonging to the plaintiffs. After working that mill the water escaped into the natural channel of the river, and was not diverted again by the plaintiffs until nearly 100 yards below Mill No. 4, where it reached the head of another dyke (Dyke No. 1), which was built near and nearly

(2) Law Rep. 1 H.L. Sc. 47.
(3) 11 H.L. Cas. 290.
(4) Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

parallel to the left bank, and which caught a portion of the stream and carried it to another mill (Mill No. 1) belonging to the plaintiffs. The rest of the stream was caught by a dyke (Dyke No 3), the head of which was in mid-channel opposite Mill No. 4, and which conducted the water to the defendants' Mill No. 3. The water escaping through the tail race of Mill No. 1 also descended to Mill No. 3; but how it was used there, if used at all, does not clearly appear. Early in the year 1878 the plaintiffs carried Dyke No. 1 up the river to a point above the head of Dyke No. 3, and there connected it with a reef of shingle which extends to the right bank of the river. By this work the whole stream has been intercepted below Mill No. 4 and conducted to Mill No. 1, except when there is water enough to overflow the reef of shingle, and except so much as may leak through the dyke or through the reef. The defendant says that water has thus been taken away from the water-course formed by Dyke No. 3; and in the month of June, 1878, for the purpose, as he alleges, of recouping himself, he erected a barrier so as to prevent the escape of water from the tail race of Mill No. 1, and to form a head of water for a new mill which he built just below No. 3. The plaintiffs have also built a new mill (Mill No. 2) just below No. 1, and have excavated the bed of the river to receive their new wheels.

There has been considerable controversy whether the defendants' operations have impeded the working of Mill No. 1 or only that of Mill No. 2, but, in their Lordships' opinion, the controversy is not now material. The important fact is that the defendants' barrier has been found to bay back the water to a maximum depth of 22 inches at Point A, which is the dividing line of the two properties. And the important question is, whether the plaintiffs are entitled to have the barrier so lowered that the water shall not be bayed back to any extent at all at Point A.

By the Civil Code of Quebec, all rights to flowing water are classed under the head of servitudes; and by section 500 real servitudes are divided into three classes, according as they arise from the natural position of the property, from the law, or from the act of man. Servitudes arising from the law have nothing to do with the present question.

Section 501, which deals with servitudes of the first class, is as follows:—"Lands on a lower level are subject towards those on a higher level to receive such waters as flow from the latter naturally and without the agency of man. The proprietor of the lower land cannot raise any dam to prevent this flow. The proprietor of the higher land can do nothing to aggravate the servitude of the lower land."

Section 503 applies specially to rivers. It says, "He whose land borders on a running stream may make use of it as it passes for the utility of his land, but in such manner as not to prevent the exercise of the same right by those to whom it belongs, saving the provisions contained in cap. 51 of the Consolidated Statutes for Lower Canada, or other special enactments." "The same right" their Lordships take to mean the right to make use of the running stream as it passes the bordering land.

Unless, then, the provisions of the Code are limited by some special enactment, the plaintiffs have a right to say that the flow of water from their land shall not be impeded, so far as it is a natural flow and independent of the agency of man. In this case the natural flow of the river has been altered by the agency of man for a long time, but an artificial flow may acquire as ample a right to protection as a natural flow.

The 3rd cap. of the 4th title of the Code treats of servitudes established by the act of man. Section 545 recognises the right of every proprietor to subject his property to such servitudes as he may think proper consistently with public order. Sections 549 and 550 are as follows:—

"No servitude can be established without a title: possession even immemorial is insufficient for that purpose."

"The want of a title creating the servitude can only be supplied by an act of recognition proceeding from the proprietor of the land subject thereto."

"Title," which answers to "titre," means a written or express grant.

Now as regards the flow of water which existed prior to 1878, and which it may be

convenient to call the established flow, it is not now disputed but that the plaintiffs became, and were just before the execution of their new works, rightfully possessed (whether by title or by some act of recognition does not clearly appear) of what, according to the Code, is a servitude over the defendants' property. Their Lordships consider that the plaintiffs then had, at least as between them and the defendants, the same right to protection for the established flow as if it were the natural flow. The defendants might not raise any dam to obstruct the established flow.

The appellant's counsel contended strongly at the bar that the working of the plaintiffs has not been impeded, or only impeded to a slight extent, and that the defendants have been materially injured by the abstraction of water. But their Lordships did not think it necessary to hear the respondents' counsel on those points: for the right to resist interference with a natural flow of water, or a flow legally established, is independent of the actual user of the water. Neither would the plaintiffs' right to have the established flow protected be barred by the mere fact that the defendants may have been injured by deprivation of water owing to the extension of Dyke No. 1. That might give the defendants a right to sue for damages, or to remove the dyke; but it does not follow that they can interfere with the established flow from the plaintiffs' land.

The appellant's counsel also insisted strongly that the action is wrong in form, but their Lordships see no reason to differ from the two Quebec Courts on this point.

The question whether chapter 51 of the Consolidated Statutes does not confine the plaintiffs to a single remedy—namely, that of pecuniary damages—is a more substantial one. There is certainly great difficulty in so construing the Code and the statute as to produce a clear and harmonious result for the whole. There is nothing on the face of the statute itself to limit the generality of the powers it appears to confer on riparian owners. It was stated at the bar that there had been a course of decision in Canada which had the effect of placing a limit on the general terms of the statute. But the only case cited, that which is stated in the respondents' factum filed on the 11th of May, 1881, appears only to refer to the mode of ascertaining damages. And the Judges in the lower Courts do not refer to any course of decision, while they entertain a great diversity of view as to the limits within which the statute is to be construed. The Superior Court appears to think that the statute is no answer to actions founded on common right and on actual injury. Mr. Justice Ramsay, while impugning both the motives and the capacity of its framers, thinks it means nothing more than that if and when damages are sued for they shall be ascertained by referees. The rest of the Court in one passage express an opinion that the statute was not intended to operate against those who had turned running waters to use, and in another, that it was intended to operate only against landowners and not against millowners. It is difficult to find the foundation for any of these limitations. At the same time, their Lordships find it difficult to suppose that by the saving of the statute contained in section 503 the Code intended to give no remedy whatever beyond pecuniary compensation for any violation of its rules. The question was very ably argued at the bar, but in the result their Lordships do not find it necessary to pronounce any opinion on it.

The substantial difficulty in the way of the plaintiffs is this: that they are seeking to establish a new and different servitude by the act of man without either grant or recognition; that they have not alleged or proved what was the precise servitude which existed prior to 1878; and that the decree which they have obtained proceeds on the assumption that the existing state of things is the natural state, or at least that there is identity between the state of things before and after the plaintiffs' operations of 1878. This is the difficulty to which the attention of their counsel was specially called, and to see how it stands it is necessary to examine the proceedings with some particularity.

In the declaration filed by the plaintiffs, they set forth their documents of title, and allege that they have had for upwards of sixty-two years the rights, privileges and water powers actually used by them. They pray for a declaration of those rights, for a declaration that the defendants have

illegally disturbed the enjoyment of them, and for demolition of the defendants' barrier. It is clear then that, so far, the plaintiffs make no distinction between the existing flow of water and the established flow.

The defendants on their part rely on the alterations of 1878. They say in substance that the mischief is caused by the plaintiffs' own works executed below Mill No. 1 in the preceding spring and summer; that the extension of Dyke No. 1 has caught all the water and carried it down to Mill No. 1; that by collecting so large a quantity of water into the narrow space on the left bank, the plaintiffs have themselves to blame if at that point the water is more abundant than they like; and that they have no grant (*titre*) giving them a right so to use the river.

In replying to these defences the plaintiffs do not fall back on their right to the natural or the established flow of the water. As regards their works below Mill No. 1, they say that the defendants' allegations are false in fact. And as to all their recent operations, they say that their only object has been to preserve the water and conduct it from one of their mills to another, as they have always done.

At the wish of both parties experts were appointed by the Court to report upon instructions given to them by the Court. They were to state—

1. The condition of the localities and of the erections described in the writings of the parties, both before and after the said erections.

2. The works of the defendants.

3. The nature of those works, and whether they are calculated to injure the working of the water-power used by the plaintiffs before they were completed.

4. What should be done so that each party may use the water without injury to the other.

5. What amount of damages, if any, should be paid by the defendants to the plaintiffs.

These instructions are not pointed to the effect of the plaintiffs' operations, but rather indicate that the only question is whether the flow existing at the time of the defendant's operations has been impeded.

In answer to the first and second questions, the experts shew the construction of the old and new mills to the effect hereinbefore stated, but they say nothing about the extension of Dyke No. 1, nor do they shew what was the former flow of the water, or the bed of the river, or in any other respect what was the state of the localities prior to the execution of the recent works of the plaintiffs. In answer to the third question they find that the defendants' new barrier bays back the water to the depth of about two feet at the boundary line, Point A. In answer to the fourth question they find that the defendants ought to lower their barrier by twenty-two inches, so as not to bay back the water at all over Point A. And they award 100 dollars for damage.

The parties then went into evidence, and the cause came on for hearing before Mr. Justice Sicotte, Judge of the Superior Court. That learned Judge gave the plaintiffs a decree in precise accordance with the opinion of the experts. The decree is founded on recitals shewing that the plaintiffs have been in possession of a real right for a year and a day, using the upper waters and letting them escape over the land of the defendants. Then it states that the barrier raised by the defendants has obstructed the waters in their natural course such as it was formerly.

It is clear, then, that the Superior Court paid no attention to the alteration effected by the plaintiffs' works in 1878. The recital of possession for a year and a day is true of the prior state of things, but is not true of the existing state of things. Nor is the present course of the water its natural course, nor such as it was formerly.

On appeal to the Queen's Bench, there was a difference of opinion among the Judges. Mr. Justice Ramsay states very clearly the point of the defence which is now under discussion. He says, "The defendants answer that they have not stopped the natural flow of the water, but that the plaintiff has, by increasing his own works above, directed the waters of the river out of their natural course, and so created an artificial accumulation of water which can only escape through the tail race." He thinks this would be a good defence if it were not for the acquiescence or recog-

nition of the defendants. But there is no evidence of such acquiescence in the plaintiffs' works of 1878. The evidence referred to by Mr. Justice Ramsay consists of two acts. First, the construction by the defendants of Dyke No. 3, which was long prior to the extension of Dyke No. 1. Secondly, the construction of the works now complained of. But in the first place, though it is true that by their new works the defendants sought to take advantage of the new flow of water, they did so because their former flow was partially cut off. And in the second place, an act can hardly be treated as acquiescence in favour of a person who has ever since been contending against it and striving to destroy it. It is at the utmost acquiescence on condition of enjoying the thing acquiesced in, and if that condition is taken away, so is the acquiescence.

Having thus disposed of the defence founded on the extension of Dyke No. 1, Mr. Justice Ramsay addresses himself to the question of damage. He thinks that there is no sufficient evidence of damage, and would either dismiss the action or remit it for further report by experts.

The opinion of the rest of the Court was delivered by Mr. Justice Tessier. That learned Judge states the defendants' plea that the plaintiffs themselves have caused the mischief complained of, but he thinks it completely answered by the report of the experts in answer to the third question. Now that question and answer relate only to the existing flow of water, and have absolutely no bearing on the prior question whether the plaintiffs are entitled to have that flow protected. Mr. Justice Tessier then quotes article 501 of the Code, and says that the company have not added anything to the volume of the water by the hand of man, because they have not introduced any foreign water into the Yamaska. On these grounds the Court decides for the plaintiffs, and dismisses the appeal.

It is true, indeed, that the plaintiffs have not increased the whole volume of the Yamaska, but they may have accumulated the waters of that river into a small space, and so have increased their depth at the point where they complain of it, and have augmented the servitude they desire to enforce. This is the very thing which the Court of Queen's Bench appear to think would be material, if only it had been done by introducing fresh water into the Yamaska, instead of being done by a readjustment of the waters of the Yamaska itself. That it must have been done to some extent seems evident from the plan, and the respondents' counsel so admitted. It results also from the evidence given by Bertrand and by Delisle, shewing how the water which used to flow to the right of Dyke No. 1 now flows to the left. The plaintiffs have left the point untouched by evidence. Whether the difference is much or little has not been ascertained. By section 501 of the Code, the proprietor of the higher land can do nothing to aggravate the servitude of the lower land. The plaintiffs have certainly accumulated the volume of the water, and have probably increased its depth in the narrow channel up to the dividing line. To that extent they are aggravating the servitude of the lower land, and to that extent at least they have no right to demand, as they do demand, a free course for the water sent down by them. That the matter is left in this uncertainty is the fault of the plaintiffs, who are bound to allege and prove a case entitling them to relief. They come into Court insisting on their right to keep unobstructed the flow of water which they say has existed as it now is for more than sixty years. The issue is distinctly raised that the existing flow is not the ancient one: but they continue to insist that it is, and refuse to shape their case so as to try the question whether or no they are really entitled to some relief on the ground that the established flow had been interfered with, and to get that amount of relief. It is unsatisfactory to dispose of a case on such grounds, but their Lordships cannot see by what right the defendants are to be compelled to keep their dam so low that the whole volume of water, as accumulated and increased by the plaintiffs, shall run away unobstructed.

It is not easy to find decisions precisely applicable to such peculiar circumstances; but their Lordships have not been referred to, and are not aware of, any case in which the plaintiff has obtained relief in respect

of any servitute except that to which he has clearly alleged and proved his right.

In *Saunders* v. *Newman* (5) the plaintiff had acquired a prescriptive right to an artificial flow of water. All he had done within recent times was to alter the construction of the wheel turned by the water. It was held that the defendant, a lower proprietor, had no right to obstruct the ancient flow; but it seems clear from the observations of the Judges that the decision would have been otherwise if the plaintiff's operations had substantially altered the flow of the water. Mr. Justice Abbott says, "When a mill has been erected upon a stream for a long period of time, it gives to the owner a right that the water shall continue to flow to and from the mill in the manner in which it has been accustomed to flow during all that time. The owner is not bound to use the water in the same precise manner, or to apply it to the same mill. If he was, that would stop all improvements in machinery. If indeed the alterations made from time to time prejudice the right of the lower mill, the case would be different; but here the alteration is by no means injurious, for the old wheel drew more water than the new one."

Tapling v. *Jones* (3) was cited as an authority for the plaintiffs; but so far as it bears upon the point under discussion it favours the argument for the defendants: for the plaintiff in *Tapling* v. *Jones* (3) succeeded in getting protection for nothing but his ancient light—those very rays of light to which he had acquired an indefeasible right. Lord Westbury says: "In the present case an ancient window in the plaintiff's house has been preserved, and remained unaltered during all the alterations of the holding.... The appellant's wall, so far as it obstructed the access of light to the respondent's ancient unaltered window, was an illegal obstruction." And Lord Chelmsford, in answering the argument that the alteration of windows had changed the character of the right so as to destroy it, says: "But it is not easy to comprehend how this effect can be produced by acts wholly unconnected with an ancient window which the owner has carefully retained in its original state."

(5) 1 B. & Ald. 258.

It may be inferred from these judgments that, if the plaintiff in *Tapling* v. *Jones* (3) had so mixed up his old lights with his new ones that they could not be distinguished, he would have failed. It is true that in that case the protection given to the ancient light carried with it incidentally protection to the new lights; but the only reason why it did so was that the new lights could not be obstructed without obstruction to the ancient light. New lights are no encroachment; nor did the plaintiff's decree aggravate the defendant's servitude, for he was only prevented from building so as to obstruct the ancient lights. In the case of an augmented flow of water the servitude of the lower proprietor is aggravated.

The result is that the plaintiffs have insisted on an enjoyment to which they have shewn no legal title, and have not proved or even alleged any case for relief in respect of that enjoyment to which they may have had a title. Their Lordships have anxiously considered whether it is possible usefully to remit the case to be tried on the true issues. They are, however, convinced that an attempt to do so will not save time or money, and that the litigation must follow the strict course. They will humbly advise Her Majesty to reverse the decrees below, and to dismiss the action with costs. The costs of this appeal will follow the result.

Solicitors—Simpson, Hammond, Richards & Simpson, for appellant; R. H. Wilkins, for respondents.

1883. Dec. 1. THE COLONIAL BUILDING AND INVESTMENT ASSOCIATION *v.* THE ATTORNEY-GENERAL OF QUEBEC.

Canada—Province of Quebec—Building Society — Incorporation of — Dominion Parliament — Powers of — Laws of the Province—Effect of.

By an Act of the Parliament of Canada (37 *Vict. c.* 103), *a building association carrying on business in Montreal was incorporated, with power to carry on business in any city or town in the Dominion and elsewhere:*—Held, *first, that the Act was within the powers of the Dominion Parliament, and that such association was legally incorporated; secondly, that the law of any province in which such association carried on its business requiring the consent of the Crown to the acquiring and holding land by such a corporation did not affect the Act of incorporation which enabled such corporation to acquire and hold land consistently with the law of the province.*

This was an appeal from a judgment of the Court of Queen's Bench for Lower Canada, reversing a judgment of the Superior Court of Lower Canada.

The proceedings were commenced by a *Requête libellée*, or petition in the nature of an information, filed on the 1st of April, 1881. It alleged that the appellants' association had been for years past, and then were, acting as a corporation in the city of Montreal and province of Quebec exclusively, and, as such, dealing in and lending money upon real estate in that province, without being legally incorporated or recognised; that the operations of the association being limited to the province of Quebec, and having provincial objects affecting property and civil rights in that province, the association could not lawfully be incorporated except by the Provincial Legislature; that the association was, in fact, incorporated by, and had carried on its operations under, an Act of the Parliament of Canada (37 Vict. c. 103), which Act, being *ultra vires*, was null and void.

The Court having ordered a writ of summons to issue upon the above petition, the association appeared, and, on the 7th of April, 1881, filed an answer to the petition. The answer alleged that the Parliament of Canada had power, and alone had power, to incorporate the association, and to grant to them the rights conferred upon them by their Act of incorporation, and to authorise them to carry out the purposes of their business outside and beyond the limits of the province of Quebec, as they have power, and intend and have arranged to do, as soon as circumstances will permit; and that the fact that they have hitherto carried on their business in the province of Quebec cannot impair the power of the said Parliament to grant them the larger powers assured to them by their said Act.

The respondent, by his replication, traversed the allegations of the plea.

The facts are stated in the judgment of their Lordships.

On the 9th of July, 1881, the Superior Court gave judgment, quashing the writ and dismissing the respondent's petition.

Against this judgment the respondent appealed, and on the 24th of March, 1882, the Court of Queen's Bench reversed the judgment of the Superior Court, and declared that the appellants had no right to act as a corporation for or in respect of buying, leasing or selling of landed property, or acting as agents in connection with such operations, within the province of Quebec; and prohibited the appellants from acting as a corporation within the province of Quebec for any of the ends or purposes aforesaid.

From this judgment this appeal was brought.

Matthews, Q.C., and *Fullarton*, for the appellants.—The material allegations of the information and petition were not established in law or in fact. The petition is bad in law and demurrable on the face of it. The Act of incorporation, 37 Vict. c. 103 (Canada), was valid and effective for that purpose, and not *ultra vires*. The Act could not be invalidated *ex post facto*; and, if it could, the facts alleged and proved are not of force to invalidate it. The Court had no jurisdiction upon the information and petition to make the declaration and order in question. There is

no law in force in the province of Quebec disentitling the appellant company from acquiring or holding immovable property as provided by its Act of incorporation.

They referred to *The Citizens Assurance Company* v. *Parsons* (1), *The Chaudière Gold Mining Company* v. *Desbarats* (2), the British North America Act, 1867, sections 91 and 92, and the Civil Code of Canada Act, 997, 998.

Gibbs, Q.C., Girouard, Q.C. (Canadian bar), and *Boddam*, for the respondent. —The Act of incorporation of the appellants is repugnant to the provisions of the British North America Act, 1867, section 92; it is beyond the powers of the Dominion Parliament. If the appellants were legally incorporated by the Act, the Act, in so far as it assumes to give them power to carry on the operations enumerated in the judgment, is *ultra vires* the provisions of the British North America Act, 1867. The Act of incorporation did not give the appellants power to carry on the operations enumerated in the judgment. The business of the appellants has been carried on by them in contravention of the laws of the province of Quebec. The appellants' business contravenes the laws of the province of Quebec respecting building societies.

They referred to the Civil Code, sections 358, 997, 1007 and 1008.

Sir Montague E. Smith delivered the judgment of their Lordships (3):—

This is an appeal from a judgment of the Court of Queen's Bench of the province of Quebec, reversing a judgment of the Superior Court, which dismissed the petition of the Attorney-General of the province praying that it be declared that the appellant company had been illegally incorporated, and that it be ordered to be dissolved, and prohibited from acting as a corporation.

The judgment now appealed from did not grant the prayer of the petition, but gave other relief, in the manner to be hereafter adverted to.

The Colonial Building and Investment Association was incorporated by an Act of the Parliament of Canada (37 Vict. c. 103).

The preamble states—

"That the persons thereinafter named, 'owners of real estate in the city and district of Montreal, and elsewhere in the Dominion, have petitioned for an Act of incorporation, to establish an association, to be called the Colonial Building and Investment Association, whereby powers may be conferred on the said association for the purpose of buying, leasing or selling landed property, buildings and appurtenances thereof; for the purchase of building materials, to construct an improved class of villas, homesteads, cottages and other buildings and premises, and to sell or let the same; and for the purpose of establishing a building or subscription fund, to which persons may subscribe or pay in money for investment or for building purposes, and from which payments may be made for said purposes; and also to act as an agency.'

"Section 1 incorporates the association.

"Section 4 enacts that the association shall have power to acquire and hold, by purchase, lease or other legal title, any real estate necessary for the carrying out of its undertakings; to construct and maintain houses or other buildings; to let, sell, convey and dispose of the said property; to acquire and use or dispose of every description of materials for building purposes; to lend money on security, by mortgage on real estate, or on Dominion or Provincial Government securities, or on the stocks of chartered banks in the Dominion; and to acquire, hold and dispose of public securities, stocks, bonds or debentures of any corporate bodies, and other defined securities. The clause provides that the association shall sell the property so acquired within five years from the date of the purchase thereof.

"Section 5 enables the association to act as an agency and trust company.

"Section 11 provides that the chief office of the association shall be in the city of Montreal, and that branch offices or agencies may be established in London,

(1) 51 Law J. Rep. P.C. 11; Law Rep. 7 App. Cas. 96.

(2) 42 Law J. Rep. P.C. 73; Law Rep. 5 P.C. 277.

(3) Lord FitzGerald, Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, Sir Richard Couch and Sir Arthur Hobhouse.

England, in New York, in the United States of America, and in any city or town in the Dominion of Canada, for such purposes as the directors may determine, in accordance with the Act; and that bonds, coupons, dividends or other payments of the association may be made payable at any of the said offices or agencies."

The secretary of the association, the only witness called in support of the petition, proved that the association had bought lands, erected houses on such lands and sold them; and had also built houses on the lands of others, and lent money on real estate. He stated that these operations had hitherto been confined to the province of Quebec, though efforts had been made to extend the business of the company to other provinces, and to establish agencies in Glasgow and New York, which had failed in consequence of the inability of the association to raise sufficient capital.

In order to understand the question which ultimately became the principal one to be considered in this appeal—namely, whether the judgment of the Court of Queen's Bench is properly founded upon the Attorney-General's petition—it is necessary to refer to the provisions of the Code of Civil Procedure of Lower Canada, on which the proceedings are based, the scope and prayer of the petition, and the nature and form of the judgment appealed from.

The heading of chapter 10, section 1, of the Code is, "Of corporations illegally formed, or violating or exceeding their powers."

Article 997 is as follows:—

"In the following cases:—

"(1.) Whenever any association or number of persons acts as a corporation without being legally incorporated or recognised;

"(2.) Whenever any corporation, public body or board violates any of the provisions of the Acts by which it is governed, or becomes liable to a forfeiture of its rights, or does or omits to do acts the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises, or exercises any power, franchise or privilege which does not belong to it or is not conferred upon it by law, it is the duty of Her Majesty's Attorney-General for Lower Canada to prosecute in Her Majesty's name such violations of the law, whenever he has good reason to believe that such facts can be established by proof in every case of public general interest, but he is not bound to do so in any other case unless sufficient security is given to indemnify the Government against all costs to be incurred upon such proceeding; and in such case the special information must mention the names of the person who has solicited the Attorney-General to take such legal proceedings, and of the person who has become security for costs."

Article 998 (as amended) reads:—

"The summons for that purpose must be preceded by the presenting to the Superior Court, or to a Judge, of a special information containing conclusions adapted to the nature of the contravention, and supported by an affidavit to the satisfaction of the Court or Judge, and the writ of summons cannot issue upon such information without the authorisation of the Court or Judge."

The material allegations of the petition filed by the Attorney-General are the following:—

"That the 'Colonial Building and Investment Association' for years past have been and still are acting as a corporation in the city of Montreal, and elsewhere, in the province of Quebec exclusively, and as such, ever since the date of its existence hereinafter mentioned, have been buying, leasing and selling landed property, buildings and appurtenances thereto, constructing villas, homesteads, cottages and other buildings, and selling and letting the same, and have also been lending money on security by mortgage or hypothec on real estate in this province, the whole without being legally incorporated or recognised.

"That the operations and business of the said association have been limited to the province of Quebec, and being, moreover, of a merely local or private nature in the said province, and having provincial objects affecting property and civil rights in the said province, the said association could not lawfully be incorporated, except by or under the authority of the Legislature of the province of Quebec.

"That the said association was incor-

porated by the Parliament of Canada, in the year one thousand eight hundred and seventy-four, 37th Victoria, chapter 103, and has ever since been in operation under the said Act of incorporation, which, for reasons above alleged, is null and void and of no effect, the said Act of incorporation being *ultra vires*.

"Wherefore your petitioner prays that a writ of summons upon the affidavit hereto annexed be ordered to issue in due course of law, and that the said defendants be adjudged and declared to have been and to be illegally formed and incorporated, and that the said illegal association may be ordered to be dissolved, and be declared dissolved; and finally, that the defendants be prohibited from acting in future as such corporation, the whole with costs distraits to the undersigned attorneys."

The petition was verified by affidavit, as required by the Code, and thereupon an order for a writ of summons against the company was issued by a Judge.

The petition also alleges that it was presented at the solicitation of John Fletcher, a shareholder of the company, who had become security for costs. It appears that Fletcher was in default in payment of his calls, but in the view their Lordships take of the case any further reference to this relator becomes immaterial.

The broad objection taken by the Attorney-General in the petition is, that the association was not legally incorporated, the statute incorporating it being *ultra vires* of the Parliament of the Dominion.

The judgment of the Superior Court, given by Mr. Justice Caron, distinctly overruled this objection. Mr. Justice Tessier is the only Judge of the Court of Queen's Bench who affirmed it. Chief Justice Dorion, in a judgment which received the concurrence of two other Judges, acknowledged that, having regard to the observations of this Board in the case of *The Citizens Insurance Company of Canada* v. *Parsons* (1), it could not be held that the incorporation of the association was beyond the powers of the Dominion Parliament, and illegal; and the majority of the Court gave judgment upon the assumption, as their Lordships understand the reasons of the Judges, that the association was lawfully incorporated. The conclusion of the formal judgment of the Court is as follows:—

"That the said company, respondents, had and have no right to act as a corporation for or in respect of any of the said operations of buying, leasing or selling of landed property, buildings and appurtenances thereof, or the purchase of building materials to construct villas, homesteads, cottages, or other buildings and premises, or the selling or letting of the same, or the establishment of a building or subscription fund for investment or building purposes, or the acting as agents in connection with such operations as the aforesaid, or any like affairs, or any matter of property or civil rights, or any objects of a purely local or provincial nature, in any manner or way within the said province of Quebec, and doth prohibit the said company, respondents, from acting as a corporation within the said province of Quebec for any of the ends or the purposes aforesaid."

Mr. Justice Monk, in a short but clear judgment, dissented from his colleagues, and agreed with Mr. Justice Caron's judgment.

Their Lordships cannot doubt that the majority of the Court was right in refusing to hold that the association was not lawfully incorporated. Although the observations of this Board in *The Citizens Insurance Company of Canada* v. *Parsons* (1), referred to by the Chief Justice, put a hypothetical case by way of illustration only, and cannot be regarded as a decision on the case there supposed, their Lordships adhere to the view then entertained by them as to the respective powers of the Dominion and Provincial Legislatures in regard to the incorporation of companies.

It is asserted in the petition, and was argued in the Courts below and at this bar, that inasmuch as the association had confined its operations to the province of Quebec, and its business had been of a local and private nature, it followed that its objects were local and provincial, and consequently that its incorporation belonged exclusively to the Provincial Legislature. But surely the fact that the association has hitherto thought fit to confine the exercise of its powers to one province cannot affect its status or capacity as a corporation, if the Act incorporating

the association was originally within the legislative power of the Dominion Parliament. The company was incorporated with powers to carry on its business, consisting of various kinds, throughout the Dominion. The Parliament of Canada could alone constitute a corporation with these powers; and the fact that the exercise of them has not been co-extensive with the grant cannot operate to repeal the Act of incorporation, nor warrant the judgment prayed for—namely, that the company be declared to be illegally constituted.

It is unnecessary to consider what remedy, if any, could be resorted to if the incorporation had been obtained from Parliament with a fraudulent object, for the only evidence given in the case discloses no ground for suggesting fraud in obtaining the Act.

Their Lordships therefore think that the Courts in Canada were right in holding that it was not competent to them to declare, in accordance with the prayer of the petition, that the association was illegally incorporated and ought to be dissolved.

There remains the question, which was mainly argued at the bar, whether the judgment of the Court of Queen's Bench, which, shortly stated, declares that the association has no right to act as a corporation in respect of its most important operations within the province of Quebec, and prohibiting it from so acting within the province, can be sustained.

It was not disputed by the counsel for the Attorney-General that, on the assumption that the corporation was duly constituted, the prohibition was too wide, and embraced some matters which might be lawfully done in the province; but it was urged that the operations of the company contravened the provincial law, at the least, in two respects—namely, in dealing in land, and in acting in contravention of the Building Acts of the province.

It may be granted that, by the law of Quebec, corporations cannot acquire or hold lands without the consent of the Crown. This law was recognised by this Board, and held to apply to foreign corporations in the case of *The Chaudière Gold Mining Company* v. *Desbarats* (2). It may also be assumed, for the purpose of this appeal, that the power to repeal or modify this law falls within No. 13 of section 92 of the British North America Act—namely, "Property and Civil Rights within the Province"—and belongs exclusively to the Provincial Legislature; so that the Dominion Parliament could not confer powers on the company to override it. But the powers found in the Act of incorporation are not necessarily inconsistent with the provincial law of mortmain, which does not absolutely prohibit corporations from acquiring or holding lands, but only requires, as a condition of their so doing, that they should have the consent of the Crown. If that consent be obtained, a corporation does not infringe the provincial law of mortmain by acquiring and holding lands. What the Act of incorporation has done is to create a legal and artificial person with capacity to carry on certain kinds of business, which are defined, within a defined area—namely, throughout the Dominion. Among other things, it has given to the association power to deal in land and buildings; but the capacity so given only enables it to acquire and hold land in any province consistently with the laws of that province relating to the acquisition and tenure of land. If the company can so acquire and hold it, the Act of incorporation gives it capacity to do so.

It is said, however, that the company has, in fact, violated the law of the province by acquiring and holding land without having obtained the consent of the Crown. It may be so, but this is not the case made by the petition. Proceedings founded on the alleged violation by a corporation of the mortmain laws would involve an enquiry opening questions (some of which were touched upon in the arguments at the bar) regarding the scope and effect of these laws, the fact of the Crown's consent, the nature and sufficiency of the evidence of it, the consequences of a violation of the laws, and the proper parties to take advantage of it: questions which are certainly not raised by the allegations and conclusions of this petition.

So with respect to the objections founded on the Acts of the province with regard to building societies. Chief Justice Dorion appears to be of opinion that, inasmuch as the Legislature of the province had passed Acts relating to such societies, and defined

and limited their operations, the Dominion Parliament was incompetent to incorporate the present association, having for one of its objects the erection of buildings throughout the Dominion. Their Lordships, at present, fail to see how the existence of these provincial Acts, if competently passed for local objects, can interfere with the power of the Dominion Parliament to incorporate the association in question.

If the association by its operations has really infringed the Provincial Building Societies Acts, a proper remedy may doubtless be found, adapted to such a violation of the provincial law; but, as their Lordships have just observed with reference to the supposed contravention of the mortmain Acts, that is not the case made by the petition.

It now becomes material to examine more closely than has hitherto been done the allegations and conclusions the petition really contains. The first paragraph, after stating that the corporation carried on its operations in Quebec exclusively, concludes thus: "the whole without being legally incorporated or recognised."

The 2nd paragraph avers that the operations of the company being confined to Quebec, and being of a merely local nature, affecting property and civil rights in the province, "could not lawfully be incorporated except by the authority of the Legislature of the province."

The 3rd paragraph alleges that, for these reasons, "the Act of incorporation is null and void, the said Act of incorporation being *ultra vires*."

The conclusion and prayer based on these allegations are, that the association be declared to be illegally incorporated, be declared dissolved, and prohibited from acting in future as a corporation.

It seems to their Lordships it would be a violation, not only of the ordinary rules of procedure, but of fair trial, to decide this appeal upon a new case which, assuming a lawful incorporation, rests on the supposed infringement of the laws of the province by the company in conducting its operations. This is not the wrong struck at by the petition, but a wrongdoing raising issues of a wholly different character to those to which the allegations and conclusions of the petition are alone directed and adapted. It is to be observed that the enquiries made of the company's secretary were of a general nature, and mainly directed to support the allegation in the petition that the company's operations had been limited to the province of Quebec. No investigation of the title to any of the lands it held, nor of any particular transaction, was gone into at the hearing.

The 998th article of the Code of Civil Procedure requires that the summons to be issued "must" be preceded by a petition to the Court containing "conclusions adapted to the nature of the contravention," to be supported by an affidavit; and provides that the summons cannot be issued upon such information without the authority of a Judge. It is quite plain that the conclusions of this petition are not adapted to the case now relied on by the Attorney-General; so that neither the general principle regulating procedure nor the special requirements of the Code allow of its being set up on these proceedings.

If the company is really holding property in Quebec without having complied with the law of that province, or is otherwise violating the provincial law, there may be found proceedings applicable to such violations: though it is not for their Lordships to anticipate them, or to indicate their form.

It should be observed that their Lordships, in the case supposed in their judgment in the appeal of the Citizens Insurance Company, in regard to corporations created by the Dominion Parliament with power to hold land being subject to the law of mortmain existing in any province in which they sought to acquire it, had not in view the special law of any one province, nor the question whether the prohibition was absolute, or only in the absence of the Crown's consent. The object was merely to point out that a corporation could only exercise its powers subject to the law of the province, whatever it might be, in this respect.

It was argued that the judgment of the Court of Queen's Bench might be sustained by the part of the prayer which asked that the company "be prohibited from acting in future as a corporation within the province of Quebec" for certain purposes. But the prohibition is asked as

consequential upon the declarations prayed for, and when these are refused, there are not only no declarations, but no allegations in the petition to sustain it. It has been seen that the prohibition contained in the judgment of the Court of Queen's Bench is not an injunction limited to restraining the company from doing specified acts in violation of particular laws of the province, but is a general prohibition founded on a declaration introduced by the Court, other than those prayed for, that the company has no right to act as a corporation in dealing with lands and buildings, and certain other matters within the province. This declaration, with the prohibition founded on it, is obviously too extensive. A prohibition in these wide and sweeping terms would prohibit the company from acquiring or dealing in lands, though it had the Crown's consent, and could only be warranted by affirming the invalidity of the Act of incorporation, which would be opposed to what has been stated in the previous part of this judgment to be their Lordships' view; or at least by affirming that the company, in exercising its powers in the province, must necessarily violate the provincial law, which, as already shewn, is not a necessary consequence.

In the result, their Lordships will humbly advise Her Majesty to reverse the judgment under appeal, and to order that the judgment of the Superior Court be affirmed, and that the present appellant's costs of the appeal to the Court of Queen's Bench in Canada be paid by the present respondent. The appellant must also have the costs of the appeal to Her Majesty.

Solicitors—Simpson, Hammond & Co., for appellant; Wilde, Berger & Moore, for respondent.

1884. April 7. BOYD CALDWELL AND ANOTHER (*appellants*) *v.* PETER MCLAREN (*respondent*).

Canada—Ontario—Rights of Water—Navigable Streams — Lumber Traffic — Statute of Upper Canada, c. 48. *s.* 5—*Construction.*

The consolidated statutes of Upper Canada, c. 48, *by section* 15, *provide that "All persons may float saw logs and other timber rafts and craft down all streams in Upper Canada during the spring, summer, and autumn freshets":*—Held, *that the words "all streams" include not only streams floatable at all places, but also streams having a sufficient body of water above and below a natural impediment, although that natural impediment renders the stream at that particular spot practically unfloatable.*

This was an appeal from a judgment of the Supreme Court of Canada.

The appellants and respondent were timber merchants, having mills at the village of Carleton Place, on the river Mississippi. On the 4th of May, 1880, the respondent filed a bill in the Court of Chancery for the province of Ontario, alleging that he was owner of land abutting on the river Mississippi; that the places through which the waters of the river flowed were not in a state of nature floatable for logs and timber at any period of the year; that such places had been made floatable only by the expenditure and improvements made thereon by the respondent; and praying for an injunction restraining the appellants from floating their logs and timber down the stream at such places.

The appellants by their answer denied that the stream in question was not floatable for timber or logs at any time of the year, and claimed that they had a right, under the statutes of the province of Ontario, to float timber and saw logs down the stream in question.

The Vice-Chancellor was of opinion on the evidence that the places in question were not floatable at freshets, and held that under these circumstances he was bound by the case of *Boale* v. *Dickson* (1),

(1) 13 U.C., C.P., 337.

which decided that if improvements are necessary to render rivers and streams floatable, the statute 12 Vict. c. 87, embodied in the consolidated statute of Upper Canada, c. 48, did not apply, and that the owner of the soil in that case had a right to prevent all intrusion upon the river. The decree of the Court restrained the user of any portion of the streams where they passed through the lands of the respondent.

The appellant appealed to the Court of Appeal of the province of Ontario, which Court reversed the decree of the Vice-Chancellor.

On appeal to the Supreme Court of Canada, that Court reversed the decision of the Court of Appeal of the province of Ontario, and affirmed the judgment of the Vice-Chancellor.

From this judgment the present appeal was brought.

Bethune, Q.C. (Canadian bar), and *Jeune*, for the appellants.—The respondent had no right to prevent the appellants from floating timber and logs down the stream in question. The statute enlarges the common law right, and confers in the public interest the right on every one to float timber and logs down every stream in the province available for the purpose. The respondent asserts a right to prevent the appellants from using the stream at all where it passes through his property. The streams in question were in their natural condition floatable for timber and logs at the time of freshets. They referred to *Boale* v. *Dickson* (1), *Bett* v. *The Corporation of Quebec* (2), and to the Canadian Statutes, 7 Vict. c. 36; 10 & 11 Vict. c. 20; 12 Vict. c. 87; 14 & 15 Vict. c. 123, and 18 Vict. c. 84.

The Solicitor-General (*Herschell, Q.C.*), *McCarthy* (Canadian bar), and *Crump*, for the respondent.—The revised statutes of Ontario confer no rights on the appellants. The statutes relate only to streams which are naturally navigable or floatable, and not to streams made navigable or floatable by improvements. The effect of the decisions, from the time the statute first received judicial interpretation up to the present, has been to establish a rule of property law in favour of ownership. Upon the faith of this rule, established as it has been for many years, extensive properties have been acquired and large sums have been expended in improvements. The statute in question being in diminution of private rights ought to be strictly construed. They referred to *The Queen* v. *Meyers* (3), *Brown* v. *Chadbourne* (4), *Morgan* v. *King* (5), *The Thunder Bay River Booming Company* v. *Speechley* (6), *The Western Counties Railway Company* v. *The Windsor and Annapolis Railway Company* (7) *Wells* v. *The London, Tilbury, and Southend Railway Company* (8), *Larg* v. *Anderson & Co.* (9) and *The Metropolitan Asylums District* v. *Hill* (10).

(2) 49 Law J. Rep. P.C. 1; Law Rep. 5 App. Cas. 84.

(3) 3 U.C., C.P., 305.
(4) 31 Maine Rep. 25.
(5) 30 Barbour, 9.
(6) 31 Mich. 336.
(7) 51 Law J. Rep. P.C. 43; Law Rep. 7 App. Cas. 178.
(8) Law Rep. 5 Chanc. 126.
(9) Law Rep. 3 App. Cas. 546.
(10) 50 Law J. Rep. Q.B. 353; Law Rep. 6 App. Cas. 193.
(11) Lord Blackburn, Sir Barnes Peacock, Sir Robert Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

LORD BLACKBURN delivered the judgment of their Lordships (11):—

In this case the now respondent, as plaintiff, filed in the Court of Chancery, Ontario, on the 4th of May, 1880, a bill of complaint, and the appellants, as defendants, filed an answer on the 11th of August, 1880. Issues of fact were raised, and evidence was heard at great length before Vice-Chancellor Proudfoot, who, on the 16th of December, 1880, pronounced this judgment:—

"1. This Court doth declare that those portions of the three streams referred to in the plaintiff's bill of complaint, where they pass through the lands of the plaintiff, described in the said bill, when in a state of nature were not navigable or floatable for saw logs and other timber rafts and crafts down the same, and doth order and decree the same accordingly.

"2. And this Court doth further de-

clare that the plaintiff is entitled to the user of those portions of the said streams where they pass and flow through the lands of the plaintiff in the said bill of complaint described, and to the improvements thereon, freed from the interruption, molestation or interference of the defendants or either of them, or their or either of their servants, workmen or agents, and doth further declare that the defendants have no right to the user of such parts of the said streams for the purpose of driving timber and saw logs, and doth order and decree the same accordingly.

"3. And this Court doth further order and decree that a writ of injunction be awarded to the plaintiff, perpetually restraining the defendants, their servants, workmen, and agents, from interfering with the plaintiff's user of the said streams where they pass through the lands of the plaintiff described in the said bill, and of the improvements erected on the said streams, and restraining the defendants from using such parts of the said streams and the said improvements for the purpose of driving their timber and saw logs."

This decree was brought by appeal before the Court of Appeal of Ontario, and, on the 8th of July, 1881,—

"It was ordered and adjudged by the said Court that the said appeal should be and the same was allowed without costs; and that the bill of complaint of the said Peter McLaren, in the Court below, be and the same is hereby dismissed without costs, except in so far as the costs of the appellants (the defendants in the Court below) have been increased by reason of the motion for an interlocutory injunction, and except their costs of appeal to this Court from the order granting such interlocutory injunction; and as to such excess and costs of appeal, the same are to be paid by the respondent to the appellants forthwith, after taxation thereof."

This order was brought by appeal before the Supreme Court of Canada, and on the 28th of November, 1882, it was ordered by that Court—

"That the said appeal should be and the same was allowed, that the said order of the Court of Appeal for Ontario should be and the same was reversed, and that the decree of the Court of Chancery of Ontario, dated the sixteenth day of December, 1880, should be and the same was affirmed.

"And this Court did further order and adjudge that the said respondents should pay to the said appellant the costs incurred by the said appellant, as well in the said Court of Appeal for Ontario as in this Court."

It is from this last order that the present appeal is brought.

There are some things not now in controversy which it is better to state before examining the allegations in the bill and answer.

The waters which drain from a considerable tract in Upper Canada collect so as to form a river called the Mississippi, which flows down to and into the river Ottawa. There is no controversy as to the Mississippi below a point in the township of Dalhousie called High Falls.

The lie of the country above that point is shewn by a map prepared by the plaintiff below (now respondent), and adopted and used on the argument here by the appellants.

The waters which flow over High Falls have their origin in a district of considerable dimensions, now divided into several townships. The upper part of this district does not appear to be very steep, though on some of the creeks in it there appear to be rapids. The creeks, at places widening into lakes, finally converge into Cross Lake, in the township of Palmerston. Thence the waters flow in what must be a considerable body of water down a steep and rocky country; and this continues to be the character of the country for some miles. The body of water flowing down this passes over a succession of rapids and waterfalls. The waterfall which is lowest down is High Falls; below that there is no controversy that the Mississippi is floatable.

All this country was till within the last forty or fifty years in a state of nature, and belonged to the Crown. It was covered with timber, and the waters flowed as the force of gravity directed them.

And now it is convenient to examine the allegations in the bill and answer.

The bill of complaint of the plaintiff

was filed on the 4th of May, 1880, in the Court of Chancery, Ontario. It states that the plaintiff is a timber dealer, having his principal saw mill at Carleton Place, a village on the Mississippi, a considerable distance down below High Falls. The defendants also are timber dealers, having their principal saw mill also at Carleton Place.

Both the plaintiff and the defendant have taken from the Crown growing timber on the lands which form the upper townships, the waters from which flow over High Falls.

The bill states that the plaintiff is owner in fee simple of several lots of land. He derives his title from grants by the Crown, some to himself and some to persons from whom he claims by mesne conveyances.

The dates of those grants are all given in the bill; the earliest grant in point of date is one of the 3rd of August, 1853, to one Skead, of lands at High Falls, and the latest in date is one of the 18th of September, 1879, to the plaintiff himself, of lands on one of the creeks above Cross Lake. It is not unimportant to remark that all the grants under which the plaintiff claims are subsequent in date to the Act of 1849.

The bill then contains these statements:—

"8. The plaintiff is also the owner of large tracts of timber land in the aforesaid townships and along the banks and in the vicinity of the said streams, and he has for many years past been using, and is now using, and expects for many years to come, and until the timber on the said land so owned by the plaintiff has become exhausted, to continue to use the said streams for the purpose of driving or floating down his timber and logs to his mill at Carleton Place aforesaid.

"9. The said streams were not navigable streams nor floatable for logs and timber during the time the said lands were vested in the Crown, nor until after the time when the improvements hereinafter referred to were made on the said streams, and when they were in their natural and unimproved state the said streams would not, even during the freshets, permit of saw logs or timber being floated down the same, but, on the contrary, were quite useless for that purpose.

"10. The plaintiff is entitled, both as riparian proprietor and as owner in fee simple of the bed of the said streams, where they pass and flow through the said lots, respectively, to the absolute, exclusive, and uninterrupted user of the said streams for all purposes not forbidden by law, and amongst other purposes to the absolute and exclusive right to the user of the same for the purpose of floating or driving saw logs and timber down the same.

"11. The plaintiff has for many years been engaged in the business of lumbering in the said county of Lanark, and at other places throughout that province, and more particularly in the timber region along the banks and in the vicinity of the said streams; and in order to get to his mill at Carleton Place aforesaid, and to market the timber and saw logs cut in that region, the plaintiff and various other persons and firms, the whole of whose rights and interests therein and thereto have been acquired by purchase by the plaintiff, have expended a large amount of money, to wit, not less than one hundred and fifty thousand dollars, not only where the said streams run and flow through the lots above described, but at various other parts thereof, over a length of about fifteen miles on the said 'Buckshot Creek,' and a length of about fifty miles on the said 'Louse Creek,' and main branch of the 'Mississippi,' in improving the said streams, by deepening the same by clearing out therefrom stumps, trees, and *débris* of all kinds, by erecting dams, slides, and other erections and improvements wherever necessary on the said streams, and occasioned by the existence of rapids, falls, and shallows in the course thereof; and by reason of such expenditure the said streams have become navigable for saw logs and timber, which, with the aid of such dams, slides, and other erections, may now be floated down the said streams during the time of freshets, which occur chiefly in the spring of the year.

"12. On the various parts of the said streams which run and flow through the said lands hereinbefore described, the plaintiff, and those through whom he claims the said lands, have expended a large amount of money in making certain specific

and very valuable improvements—that is to say":—

(The description of the improvement at High Falls may serve as a sample):—

"On the said parcel of land, being the front half of lot number fourteen in the first concession of the township of Sherbrooke North, the plaintiff, and those through whom he claims the said parcel of land, at a place called 'High Falls,' a portion of the said Mississippi river, which runs through the said lot, have erected a dam across the said Mississippi, where there is a fall of about seventy feet from an island in the centre of the said stream to the south shore thereof, and also a dam between the said island and the north shore thereof, and the said plaintiff, or those through whom he claims—that is to say, the said Skead and Gilmour, or one of them—has formed an artificial stream, consisting of a cutting through rock and earth, and a slide connecting the lake or pond above the said High Falls, on an extension of the said Mississippi river, with the lake or pond below the said falls, which said cutting also passes through the aforementioned lot in the township of Dalhousie, the effect of the building of the said dams at the entrance of the 'High Falls' being to raise the level of the waters in the said pond or lake above the same, and to form a stream in the said cutting or artificial stream as aforesaid made through the said lot fourteen and the said lot in Dalhousie, and thus rendering the same capable of floating saw logs and timber down the same.

"31. The defendants, being engaged in their business as hereinbefore alleged, have recently got out of the woods in the said township of Abinger a large quantity of saw logs, to wit, about nine thousand saw logs, the whole of which is now lying in or being driven by the defendants down the said Buckshot Creek, and they commenced to enter the said improvements on Buckshot Creek on the twenty-seventh day of April, one thousand eight hundred and eighty, and they have taken them over the improvements hereinbefore particularly referred to, and made as aforesaid on lot one in the third concession of Abinger aforesaid, and they are now driving them down the said Buckshot Creek with the intention of taking, and they threaten and intend to take, them over the other hereinbefore described improvements made as aforesaid on the said Buckshot Creek, and down through the main branch of the said Mississippi, and will do so unless restrained by the order and injunction of this honourable Court.

"32. The defendants are also taking a quantity of saw logs, about ten thousand in number, down the said Louse Creek, and through the said lands belonging to the plaintiff in the township of Denbigh, and thence down the said stream, and to do this the defendants threaten and intend to avail themselves, and unless restrained by this honourable Court they will avail themselves, of the said improvements made by the plaintiff and those under whom he claims, and, in so floating and running the said timber and saw logs down the three said streams, the defendants are interfering with and obstructing the plaintiff and his employés in floating and running down the plaintiff's timber and saw logs, to the great damage and injury of the plaintiff, and to the damage and injury of the said improvements.

"33. The defendants, in so floating and running their timber and saw logs down the said streams, are wrongfully and forcibly, and without right or colour of right, making use of the improvements made by the plaintiff and those under whom he claims, and to which, for the reason aforesaid, the plaintiff is entitled to the exclusive and uninterrupted user . . . .

"37. The plaintiff further shews that the defendants have made use of the said streams and the improvements thereon without any authority or licence from the plaintiff, and well knowing, as the facts are, that the plaintiff was the owner of such improvements, and that owing to the said improvements, all of which have been made by the said plaintiff or those through whom he claims, the said streams had become useful for the purpose of floating down saw logs and timber, and that before the said improvements were made, and when the streams were in a state of nature, they would not permit of timber and saw logs being floated down the same even during freshets, yet the defendants have never paid to the plaintiff any compensa-

tion for the user of the said streams and improvements, and the plaintiff submits that the defendants are liable to pay him compensation therefor, and that this honourable Court should direct an account to be taken of the amount of compensation which the defendants should pay, and that the defendants should be ordered to pay the same to the plaintiff when so ascertained."

The following are the more material parts of defendants' answer :—

"We are the owners of certain timber limits situated in the townships of Abinger and Denbigh, in the county of Addington, for the purchase of which we paid a very large sum of money.

"The said limits were originally the property of the Crown, and were sold by the Crown Lands Department to one Skead, and we claim title thereto through the said purchaser from the Department.

"Our object in purchasing the said limits was to obtain a supply of timber and saw logs for our mills at Carleton Place, and we would not have purchased and paid the price we did for them for any other purpose or object.

"Timber and saw logs, cut and manufactured upon the said limits, can only be brought to our saw-mill by means of the Mississippi river, and Buckshot and Louse Creeks, mentioned in the plaintiff's bill, form the only outlets by which the said timber and saw logs from our said limits can be carried to the said Mississippi river.

"We deny the allegations contained in the 9th and 10th paragraphs of the said bill, and, on the contrary, we say that we are informed and believe, and charge the fact to be, that the said Mississippi river and Buckshot and Louse Creeks are all streams which are navigable or floatable for timber and saw logs within the meaning of the statutes in that behalf, and we claim the benefit of the said statutes.

"We deny that the alleged improvements upon the said streams, claimed by the plaintiff, confer upon him the rights he claims against us by his said bill, but we have nevertheless been always ready and willing, and before the commencement of the suit we offered the plaintiff, to pay him any proper sum for the use of any of said improvements, or any loss or damage that he might fairly claim to be put to by reason of the passage of our said timber and logs over the said improvements, and we offered to submit the question of the amount we should pay to arbitration, but the plaintiff would not accede to any of our offers."

Mr. Justice Strong begins his judgment by saying :—

"The finding of the learned Judge before whom this case was tried, that those parts of the river Mississippi and of Louse and Buckshot Creeks, at which the appellant has constructed his improvements, were not originally and in their natural state capable of being used, even in times of freshets, for the transportation of saw logs or timber, was not on the argument of this appeal demonstrated to be erroneous, and a careful perusal of the evidence has led me to the conclusion that an attempt to impugn that finding would have been hopeless, even if we could have entirely disregarded the rule so often laid down in this Court, that the finding of the Judge before whom the witnesses were examined is, in the case of contradictory evidence, entitled to the strongest possible presumption in its favour. We must, therefore, assume the facts to be as they are stated in the first declaration with which the decree under appeal is prefaced, namely,—

"'That those portions of the three streams referred to in the plaintiff's bill of complaint, where they pass through the lands of the plaintiff, when in a state of nature were not navigable or floatable for saw logs and other timber, rafts, and crafts down the same.'

"The appellant's title to the lands upon which he has made the improvements in question, including the beds of the respective streams, was not seriously disputed, and has been established by the production of his title-deeds. The question for this Court to determine is, therefore, purely one of law."

To this their Lordships agree. The respondent cannot now contend that timber could not be practically floated down those portions of the streams whilst in a state of nature, though not so well or so profitably as after the improvements were made; and the Vice-Chancellor cannot be understood to find that it was impossible

to float any timber at all over High Falls. For instance, in an affidavit used by the plaintiff for the purpose of obtaining an interim injunction, Mr. T. Skead says:—

"I purchased High Falls, in the thirtieth paragraph of the bill referred to, from the plaintiff's father, and built the dam and slides there; and about the year of our Lord eighteen hundred and forty-nine I took John Allan Snow, a surveyor, with me and surveyed the whole line of the river from High Falls to Cross Lake, and he and I then drew a plan of the improvements which we thought necessary to make the river navigable and floatable for timber and saw logs, which said improvements were substantially carried out by Messrs. Gilmour & Co., who purchased from me the lands and limits bordering on this portion of the said Mississippi.

"Before the improvements at High Falls a Mr. Playfair, during the highest freshets, used to run a few hundred logs over the falls, but they were so injured and damaged in their transit thereover that he told me he would have to give it up. I had not made the slide hereinbefore referred to."

The finding of the Vice-Chancellor must be understood as meaning only that in a commercial sense it could not be done; the timber being so difficult to guide over the falls and so liable to be injured that no one could profitably do it, and consequently no one would do it. And it must be taken, as admitted, that at many places above High Falls and for considerable distances timber could be floated along the streams. Obviously this must have been the case wherever the streams expanded into lakes.

So understanding the finding, the question, which though raised as to many places may most conveniently be dealt with as if it related to one only, seems to be this:—

The waters have formed a stream or river, which for many miles is capable of floating logs and timber, at least during the freshets, down towards a market, but at a part of it, where the soil on both sides of the stream belongs to the plaintiff, there is a natural obstacle, such as a rapid and waterfall, which renders it impracticable in any commercial sense to float timber down the stream at that part.

The plaintiff, or those through whom he claims, have made improvements, consisting substantially of dams above the waterfall to keep the waters back so as to make the rapid deeper and slower, and made slides over the top of the dam and down to below the falls, so that timber can by means of those slides be carried safely over the waterfall. The defendants propose to bring their timber from the part of the stream above the obstacle by means of these improvements. They do not claim to do this by any common law right, but by virtue of certain statutes of Upper Canada. And it cannot be disputed that the Legislature had full power to confer such a right; whether they have done so or not must depend on the construction of the statutes.

The defendants have always been ready and willing to pay for the use of the improvements; this is obviously fair and just, but it is not pretended that the statutes provide in terms that if the defendants use such improvements they shall pay for them. Had either of them done so, the intention of the Legislature to authorise them to pass over the obstacle by means of the improvements would have been quite clear. The absence of any such provision is strongly relied on as shewing that the Legislature did not so intend.

The plaintiff relies on his common law right, as owner of the soil, to prevent any one from using his soil in any way which he does not choose to allow, unless by statute that right is abridged, as it may be.

There has been a considerable diversity of opinion amongst the Judges in the Courts below. Their Lordships have perused their opinions with much advantage, and have with great care considered the reasons of those from whom they differ. In the result they come to the conclusion that the judgment of the Court of Appeal for Ontario is right and should be restored.

They think that there can be no doubt that by the law of England the owner of the soil on both sides of a running stream, whether it be navigable or not, is, *prima facie* at least, owner of the soil which forms the bed of the stream, and, as owner of this land covered by water, has all the rights of a landowner. But this is subject

to all rights of the owners above him to have the water flow away from their land, and to all rights of the owners below him to have the flow come down to them as it was wont. It is also subject to any rights which the public have over it.

One of the practically most important rights of the owner of a portion of the soil of the river is the right to use the water for a mill, and in order to do so, or indeed for any other lawful purpose, to erect a dam on it. The public may have rights to navigate the stream, and whenever such a right exists the right of the millowner and the right of the public come into conflict. They may co-exist, but when they do one or other must be modified.

The rights of the public to navigate a stream may be created either by prescription or by dedication by the owner of the soil within time of legal memory. And in an old settled country like England it could seldom be material to enquire further than as to those modes of creating such a right. But when the law of England was taken out to a new unsettled country, where prescription could not exist, and dedication could rarely exist till after the country was to some extent settled, it became important to enquire whether the principles of the common law did not give such a right independent of any user, wherever the stream was, in its nature, capable of being navigated. No question arises in the present case as to this right of navigation; and, at all events, up to a period later than 1849, it was a question of great doubt what the law of Upper Canada was on this subject. The right now claimed to use streams, not navigable for general purposes, to float down timber, was one which in England, if it existed at all, from the nature of the country, could not be important: it never came in question in any case of which we are aware. It was one which, in a new wild country overgrown with timber, might be very important, and it must have been a question of doubt what was the right.

The owner of the land covered with water over which a stream flows has the unquestioned right to erect a mill on it, if he does not thereby infringe on any right of the proprietors above or below him, or on the public rights. The doubts as to what was the extent of the public right over such streams cast a doubt on the extent to which it was lawful to erect mill dams.

It is obvious that it was very desirable that, for the purposes of encouraging the development of the country, these doubts should, as soon as possible, be solved. And as the Legislature of Upper Canada had full power to enact what should be the law in that country, the real question is, what did they enact?

The statutes of Upper Canada have been consolidated and afterwards revised; but the Acts under which this is done are merely consolidation and revision Acts, and do not alter the effect of those statutes which bear on this question. The first statute which it is necessary to notice is the Act of the 25th of March, 1828.

After a preamble that it is found expedient and necessary to afford facility to the inhabitants of the province engaged in the timber trade in conveying their rafts to market (as well as to the ascent of fish) in various streams now obstructed by mill dams, it enacts that every occupier of "any mill dam which *is* or *may be* legally erected," where timber "is usually brought down the stream on which such dam is erected," shall, under a penalty, "construct and erect a good and sufficient apron to his dam." The 2nd section describes the kind of apron:—"Such apron shall not be less than eighteen feet wide, by an inclined plane of twenty-four feet eight inches to a perpendicular of six feet, and so in proportion to the height, where the width of the stream will admit of it; where such stream or dam is less than fifteen feet wide, the whole dam shall be aproned in like manner with the same inclined plane."

Without encumbering the case by considering any question relating to the fish, the intention of the Legislature seems obvious. They contemplated that there might be mill dams then or thereafter legally erected on streams down which lumber was usually brought. And without enquiring what were the conditions necessary to make such an erection legal, the Legislature, for the purpose of affording facility to those engaged in the lumber trade in conveying their rafts to market, impose a duty on the millowner to add to

his mill an apron so as to let the rafts pass over it. This did, to some extent, impose on the owner of the dam, by supposition legally erected, the burthen, without any compensation, of building an apron; but it is clear that the Legislature did intend for the good of trade to impose that burthen on them. Probably it was not supposed to be very heavy. The Act, however, is in terms confined to those streams down which lumber was "usually" brought.

Several statutes were referred to on the arguments, which their Lordships think do not much affect the question.

Then comes the Act of the 30th of May, 1849.

The preamble is, "Whereas it is necessary to declare that aprons to mill dams which are now required by law to be built and maintained by the owners and occupiers thereof in Upper Canada" (obviously referring to the Act of 1828 already cited) "should be so constructed as to allow a sufficient draft of water to pass over such aprons as shall be adequate in the ordinary flow of the stream to permit saw logs and other timber to pass over the same without obstruction." This clearly indicates an intention to throw upon those who have dams "legally erected" upon streams a further burthen. The 1st section with the object contemplated by the preamble cast upon them without any compensation the duty to erect and maintain waste gates, brackets, and slush boards, so as to keep the depth sufficient to allow the passage of "such saw logs, lumber, and timber as are usually floated down such streams," with a proviso that no person shall be required to build aprons or slides on small streams unless required for the purposes of floating down lumber."

The 5th section of this Act goes beyond the object mentioned in the preamble; it is, however, perfectly settled that though the preamble aids in the construction of an Act, effect is to be given to the intention of the Legislature, if it sufficiently appears, though it goes beyond the object of the preamble.

It is upon the construction of this 5th section that their Lordships think this case depends. In the consolidated statutes for Upper Canada, c. 48, it is divided into two sections, sections 15 and 16, and the meaning is made rather clearer by transposing the position of the two provisoes at the end of the section which are made into section 16, but there is no alteration in the substance.

The 5th section is in the following terms:—

"That it shall be lawful for all persons to float saw logs and other timber rafts and craft down all streams in Upper Canada, during the spring, summer and autumn freshets, and that no person shall, by felling trees or placing any other obstruction in or across such stream, prevent the passage thereof: Provided always, that no person using such stream in manner and for the purposes aforesaid shall alter, injure, or destroy any dam or other useful erection in or upon the bed of or across any such stream, or do any unnecessary damage thereto or on the banks of such stream, provided there shall be a convenient apron, slides, gate, lock, or opening in any such dam or other structure made for the passage of all saw logs and other timber, rafts, and crafts authorised to be floated down such stream as aforesaid."

This enactment, it is to be observed, became law in 1849, and has not been altered since. In 1863, the case of *Boale* v. *Dickson* (1) was decided in the Court of Common Pleas of Upper Canada. The question there was as to a claim for the use and occupation of a slide on the Indian River. The Court of Common Pleas thought that if the slide was on a stream within the meaning of the enactment their Lordships are now considering, the plaintiff must fail; whether, if the statute applies, this consequence would follow, their Lordships need not stop to enquire. So thinking, the Court of Common Pleas put a construction on the Act.

The Vice-Chancellor, in the present case, after the evidence was heard, said, addressing the defendant's counsel:—

"I think, Mr. Bethune, that you stated that if I considered myself bound by the authority of *Boale* v. *Dickson* (1), there was little use in arguing the case. It seems to me that I am bound by that case in this respect, that I ought to be bound by and respect the ruling of a Court of co-ordinate jurisdiction, though not in the same sense as I should be bound to follow

a judgment of the Court of Appeal. If the interpretation placed upon it in *Boale* v. *Dickson* (1) be the construction this statute is to bear in regard to improvements upon rivers and their floatability, I understand that case to determine that if any improvements are necessary to render streams floatable, the statute does not apply, that it does not alter the character of the private streams, and that the owner of the land over which the stream flows has the right to prevent intrusion upon it. It therefore comes to be a question of evidence as to whether the streams mentioned here can be considered floatable without artificial aids."

The Judges of the Court of Appeal for Ontario all agreed that Vice-Chancellor Proudfoot had correctly apprehended the construction put upon the statute by the Court in *Boale* v. *Dickson* (1), and that he could not properly disregard the decision of a Court of co-ordinate jurisdiction, but all four thought that construction wrong; Mr. Justice Burton, though dissenting from his brothers, expressly saying:—

"I quite agree with them in their view of the doctrine laid down in *Boale* v. *Dickson* (1), and think there is nothing to warrant the qualified construction placed upon section 15 of the 12th Vict. c. 87, by the learned Judge who delivered the judgment in that case; but I am unable to bring myself to the conclusion that the mere permission, or the recognition of the right, to float all streams during freshets make the entire streams *publici juris*, although, in point of fact, many portions of it may be quite impassable, even in times of freshets, for the smallest description of timber or other article of merchandise."

The Judges in the Supreme Court thought that the construction put upon the statute in *Boale* v. *Dickson* (1) was right, and the Chief Justice, Sir W. Ritchie, thought that, even if wrong, it ought to be maintained on the ground taken by Lord Ellenborough in *Doe dem. Ottley* v. *Manning* (12), that in questions of conveyancing it was important to adhere to decided cases even if convinced they were originally wrong. This doctrine has often been recognised. The maxim "*Communis error facit jus*" is peculiarly applicable to conveyancing questions. But this is not a question of conveyancing, and their Lordships do not think that there is any ground for saying that *Boale* v. *Dickson* (1), if wrong, should be followed.

And their Lordships agree with the Judges in the Court of Appeal for Ontario in thinking that there is nothing to justify any Court in construing the words "all streams" as meaning such streams only as are at all places floatable. They do not think that every little rill, not capable of floating even a bullrush, is a stream within the meaning of the Act. But when once it is shewn that there is a sufficient body of water above and below the spot where the natural impediment exists, though that natural impediment renders the stream at that spot practically unfloatable, it does not make it cease to be a part of the stream in the ordinary sense of the words.

It has been argued that though this might have been the natural meaning of the words, if the enactment had been "that it should be lawful to float saw timber rafts and craft down all streams in Upper Canada *at all seasons*," the Legislature here confined the enactment to making it lawful "during the spring, summer, and autumn freshets." And that, it is argued, shews an intention to cut down the large words "all streams." Their Lordships do not assent to this argument. Probably the Legislature confined the enactment to the seasons during which lumberers ordinarily ply their trade, thinking it better to leave the rights of all parties at all other seasons untouched. Whatever was their motive it seems clear, on the construction of the enactment, that if a lumberer claims a right at any other period than during the freshets to float timber along a portion of a stream, he must rest his claim on something else than this enactment. It is not, however, an objection to his right under this enactment to float during freshets, that he may on the same part of the stream be entitled, on other grounds, to float at all times.

Their Lordships do not think that the limitation of the right in the stream to one period of the year prevents that from

(12) 9 East, 71.

being a part of the stream which would otherwise, in the ordinary use of language, be a part of the stream, even if the existence of an impediment there makes it not practically available for the purposes of the lumber even in freshets. The respondent's construction of the enactment seems to them to require the introduction by implication of some such words as these, "except on such parts of the streams as are, owing to the presence of an impediment such as a waterfall, not practically available for the purposes of floating timber, until some improvements are made."

There does not seem to their Lordships to be any sufficient reason for implying this or any similar qualification.

It is quite true that it is not to be presumed that the Legislature interfere with any man's private property without compensation. But if the whole stream is floatable during the freshets it cannot be doubted that the Legislature did mean, with the object of affording facility to lumberers to carry their timber to market, to say that they should have the right to float down the stream at these seasons without obstruction by the owners of the bed of the river without paying them anything. If, as seems to be the opinion of Mr. Justice Burton, the principles of the common law could be worked out so as to give this right, at any rate the Legislature in 1849 did not know this, or mean to declare it. Without declaring what the law then was, they enacted that "from this time (1849) forward the law shall be as we now enact."

It is, however, quite true that no power is given by the statute to make practically floatable spots which are not so in their natural state, and that the Legislature, who must be taken to know that such streams as this Upper Mississippi were likely to exist in the unimproved parts of the country, must have contemplated that before the right they gave became practically useful something must be done which would be a trespass if done without the authority of the owner of the soil.

There does not seem to be any great difficulty in holding that, if all that was done was to remove some existing obstruction, as by blowing up a rock which impeded the passage, and thus putting the bed of the stream into the state in which it would have been if the rock had never existed, a right to float timber down that spot might be exercised, even though the blowing up the rock could not be justified against the owner of it. There is more difficulty in dealing with the case of a dam maintained by or with the assent of the owner of the soil for the purpose of making the part of the stream practically floatable which was not so in its natural state. There is certainly no obligation on the person who makes and maintains such a dam to continue to maintain it; if he ceases to do so it becomes useless, and can only, if at all, be made useful by forming a joint stock company for the purpose of doing so; and if the Court of Common Pleas in *Boale* v. *Dickson* (1) were right in thinking that, if the statute applies, a promise to pay slidage for the use and occupation of such works, in consideration that the plaintiff would allow the defendant to use them, could not be enforced, the Legislature have improvidently reduced the inducement to make the stream at such a part practically floatable. But, though this may be so, the question remains whether the words of the Legislature do not express an intention that, when the part of the stream could be used, it should be lawful for all persons to use it.

It does not seem to their Lordships that the private right which the owner of this spot claims to monopolise all passage there is one which the Legislature were likely to regard with favour, and in the earlier legislation they had, without scruple, cast on the owners of dams "legally erected" the obligation, at their own expense, to make such dams passable for lumber; if the law was (contrary to what is laid down in *Boale* v. *Dickson* (1),) that reasonable compensation should be payable for the use and occupation of works maintained for the purpose of rendering the portion of the stream practically useful for floating purposes, there would be no hardship at all; if the Legislature had inserted a provision that such should be the law, there could have been no doubt of their intention. They have not inserted such a provision; but, though that

makes the case somewhat difficult, their Lordships do not think it enough to justify what seems to them a somewhat violent departure from the plain meaning of the words.

Their Lordships will therefore humbly advise Her Majesty that the judgment of the Supreme Court should be reversed, and that of the Court of Appeal restored. They do not think there is any reason for departing from the general rule that the costs of the appeal should be borne by the unsuccessful party, the respondents.

Solicitors—Jonas ap Jones, for appellants; Johnston, Harrison & Powell, for respondents.

1884. March 22.

LETTERSTEDT (*now Vicomtesse de Montmort*) (*appellant*) *v.* BROERS AND OTHERS, AND GIDDY (*curator ad litem*), (*respondents*).

Cape of Good Hope—Courts of Equity—Jurisdiction—Trustees—Power to Remove—Practice.

Courts of equity have jurisdiction to remove trustees and to substitute others, not only in cases of misconduct, but whenever it appears that the continuance of the trustees would prevent the trusts being properly executed.

The main guide to the Court in exercising such a jurisdiction as that of removing trustees must be the welfare of the beneficiaries.

Mere friction and hostility between trustees and persons beneficially entitled will not of itself be sufficient reason for the removal of a trustee.

This was an appeal from certain parts of a judgment of the Supreme Court of the colony of the Cape of Good Hope, dated the 11th of July, 1879, an order of the said Supreme Court of the 14th of September, 1880, and a judgment of the said Supreme Court of the 2nd of July, 1881.

The subject-matter of the appeal was as to the right of the appellant to have from Frans Jacob Broers, the first named respondent, in his capacity of secretary to the board of executors of Cape Town, an account supported by vouchers shewing the amount of profits to which the appellant is absolutely entitled under the will of her father, the late Jacob Letterstedt, deceased, and to have the said board of executors of Cape Town removed from the executorship of the said will.

The material facts of the case are stated in the judgment of their Lordships (1).

Davey, Q.C., Jeune, and *E. J. Elgood,* for the appellant.—By the judgment of the 11th of July, 1879, it was declared that the appellant was absolutely entitled to the four-sixths of the profits claimed by her. It is impossible to ascertain the amount of such profits without the account prayed for by her, and the production of the proper vouchers in support of such account. Even if the appellant is held to be precluded by the judgment given upon her appeal from the judgment of the 11th of July, 1879, from reopening or in any way investigating the accounts prior to the 1st of January, 1873, she is entitled to an account from that date, and to the production of all the necessary and proper vouchers. The board of executors have committed breaches of trust, and been guilty of misconduct, and ought to be removed from being executors and trustees of the will of the testator.

They referred to *Story's Equity Jurisprudence,* section 1287 *seq.*

Matthews, Q.C., Rigby, Q.C., and *H. D. Greene,* for the respondents.—The circumstances of the estate, the course of litigation, and the *bona fide* administration and management by the respondents resulting in large benefit to the estate, render it unfair and inequitable that any further relief against the respondents should be given. The respondents have not been guilty of any misconduct or maladministration. The appellant, by approving the accounts rendered, and assenting to the administration and management of the estate by the respondents, is estopped and precluded from claiming accounts, and from com-

(1) Lord Blackburn, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

plaining of the administration and management of the estate.

E. W. Byron, for the respondent Giddy, curator *ad litem*.

LORD BLACKBURN delivered the judgment of their Lordships (1) :—

This is an appeal against part of a judgment of the Supreme Court of the Colony of the Cape of Good Hope, dated the 11th of July, 1879, an order dated the 14th of September, 1880, and a judgment of the 2nd of July, 1881.

These judgments and order were made in an action commenced by the appellant in June, 1878, against the defendant Broers, in his capacity of secretary to "the board of executors of Cape Town," who are the principal defendants below, and respondents now.

This is a body incorporated by an ordinance of the Cape of Good Hope. It is not necessary to say more of them than that, by the terms of their deed, they might act as executors and trustees, on the terms that they were to have remuneration for so acting.

The other respondent was added during the litigation by directions of the Court below. It is not necessary to notice him further until the costs of this litigation are to be disposed of.

It is desirable before proceeding to discuss the judgments and order to state so much of the facts as is necessary to make them intelligible.

The appellant is the only daughter of Jacob Letterstedt. She was born on the 13th of May, 1853, and consequently attained the age of twenty-one on the 13th of May, 1874, and the age of twenty-five on the 13th of May, 1878.

Jacob Letterstedt, her father, died on the 10th of March, 1862, leaving a will.

This appeal does not require their Lordships to construe that will, and it is not necessary to state its provisions further than is required to make intelligible the questions which their Lordships are called upon to decide.

The testator carried on in his lifetime a brewing distillery and malting business at two places, Mariedahl and Cape Town, and he directed in his will that this business should be carried on after his death as the same was carried on by him, and that his executors should advance a sufficient capital for the purpose, not exceeding in all 10,000*l*. He makes rather elaborate provisions as to how the business should be carried on by managers; and he directs that the profits of the business should, until his child or children should attain their age of twenty-five years, be divided into six shares, "whereof four shares shall be for the benefit of my child or children, one share to the manager of the business at Mariedahl, and one share to the manager of Cape Town." He appoints David Thompson to be manager at Mariedahl. At Cape Town he appoints Per Oscar Hedelius, and failing him Tobias Spengler. And he directs that in case of a vacancy the executors shall, when requisite, appoint a fit person to be manager. If the manager at Cape Town prefers it, he is to receive an annual salary of 350*l*., with a further allowance of 150*l*. for a clerk, instead of a share in the profits. So long as the business is carried on in the above manner the executors are to appoint two persons to inspect the property and examine the accounts twice in every year, receiving two guineas a day for their trouble.

The testator also at the time of his death carried on a business in partnership with Per Oscar Hedelius, under the firm name of Jacob Letterstedt & Co.

There is no direction in the will as to this business; but, under the terms of the deed of partnership, it is clear that the testator was not bound to carry on that business after the 1st day of January next ensuing after the death of Per Oscar Hedelius—that is, as he died on the 6th of July, 1863, after the 1st of January, 1864. What might be the obligations of the testator's executors under that deed during the twenty-one months between the death of the testator in March, 1862, and the 1st of January, 1864, it is not necessary to consider; but, after that date, they had no authority to carry on the business.

The following parts of the will may conveniently be read now :—

"I declare that in case my said daughter shall marry, and have a son or sons, such son or the eldest son shall, upon his attaining the age of twenty-one years, be ab-

solutely entitled to the house and premises situated No. 5 Heeren Gracht, including the stores, Nos. 3, 4, and 5 Castle Street, or, in case the same shall have been sold, the proceeds of the sale of the said house, premises and stores: provided that, until such son of my said daughter shall attain the age of twenty-one years, my said daughter shall receive the rents of the said property, or the interest of the proceeds thereof, if sold as aforesaid. And I declare that the second son or such other younger son of my said daughter as shall take my name shall be entitled to the amount of a certain policy effected with the Alliance Life and Fire Assurance Company, London, upon my life for the sum of three thousand pounds, executed in the year one thousand eight hundred and fifty, with the interest which shall have accrued thereon from my death when he shall have attained the age of twenty-one years. And in case there shall be no such son the same shall fall into and become part of my general estate. And I declare that my said executors shall be entitled to administer the said house, premises and stores in the Heeren Gracht and Castle Street, or the proceeds thereof, until the same shall devolve upon my grandchildren, and shall also administer the amount of the said policy of insurance and accumulations, until my grandson herein-mentioned shall become entitled thereto, or until the same shall fall into my general estate."

The importance of this is that it shews that some at least of the trusts to be administered by the executors did not terminate on the appellant attaining the age of twenty-five years. And, in the possible event of her dying before her children attain twenty-one, the question who are to be the trustees during their minority may be of practical importance.

Then, after giving some legacies, he proceeds:—

"And I devise and bequeath all the rest, residue and remainder of my estate, property and effects, as well movable and immovable, and wheresoever situate, and whether the same be in possession, reversion, remainder or expectancy, which shall remain after payment of my just debts and funeral and testamentary expenses, and not hereby otherwise disposed of, unto my said daughter if and when she shall attain the age of twenty-five years, or marry under that age, the same to be bound with *fidei commissum*, so that my daughter may enjoy the interest, dividends and annual income thereof to be paid to her annually upon her receipt, or in case of her absence from the place of residence of my executors upon a power of attorney to be executed by her, and which interest, dividends or annual income shall not be under the control of any husband whom she may marry, but shall be applied solely for her use and benefit; and after her death the said residue shall be paid and belong to her child and children upon such child or children attaining the age of twenty-one years being male, or attaining twenty-one years or marrying with consent of parents or guardians being female; and if she shall die without leaving any child or children who being a son or sons shall live to attain the age of twenty-one years, or being a daughter or daughters shall live to attain that age or marry, I devise and bequeath my estate, property and effects, subject to the legacies and bequests hereby given, to the person or persons who, according to the law at the Cape of Good Hope, would be entitled thereto if I died intestate and unmarried. If I should leave any child or children hereafter born, who being a son or sons shall attain the age of twenty-five years, or being a daughter or daughters shall attain that age or marry under it, I declare that such child or children shall participate in all the legacies, bequests and benefits hereby given to my said daughter in equal shares with her, and in that case I revoke and withdraw from this will the last clauses hereinbefore contained. And I direct that all moneys and effects which shall accrue by way of rent, profits of business, or otherwise, shall be paid to the board of executors as follows—that is to say, the said rent within six months after the same shall become due, and the said profits within six months after the books shall be closed and the profits of the business ascertained.

"I appoint Stads Kadet Carl Johan Malmsten, of Stockholm, Iven Gustav Letterstedt, and Rich Antiquarian B E Hildebrand, guardians of my

daughter and of any other child I may leave during their minority; and in case of the death, resignation or incapacity of any such guardians, or of any guardians to be appointed under this power, I empower the surviving or continuing guardian or guardians, or the executors or administrators of the last surviving or last acting guardian, to appoint a new guardian or guardians in the place of the guardian or guardians so dying, resigning or becoming incapable. It is my wish that my said daughter, or any other child I may have, shall be educated in the Lutheran religion, and shall reside in Sweden after she or they shall have attained the age of thirteen years. I appoint Tobias Spengler, Per Oscar Hedelius, and the board of executors, Cape Town, the executors of my will and testament, and administrators of my estate, with all such power and authority as is required in law, and especially the power of assumption, substitution and surrogation.

"I give to the said board of executors an annuity of one hundred pounds sterling so long as the business at Mariedahl shall be carried on.

"I declare that if any dispute should arise between the executors hereby appointed, the same shall be decided by the vote of the majority, the board of executors having in such case one vote as if consisting of one person. I desire that an inventory shall be made of my estate within six weeks after my death, or if I shall die while absent from the Cape of Good Hope within six weeks after information of my death shall be received within the colony. I direct that my executors shall render to the guardians a full and particular annual account of all receipts and payments in respect of my estate, with proper vouchers for the same."

The will was proved on the 19th of May, 1862, by the three executors, Per Oscar Hedelius who died in 1863, Tobias Spengler who died in 1866, and the board. No fresh executors were appointed under the power of assumption, substitution and surrogation which the testator especially conferred on his executors, and so in 1866 the board were the sole executors and trustees under the will. After the death of Spengler, certain directors of the board took the management of the Cape Town business.

The testator, who was by birth a Swede, and who by his will desired that his daughter, after attaining the age of thirteen, which she did in 1866, should reside in Sweden, appointed as guardians Swedish gentlemen, no one of whom resided in the colony, or had, as far as appears, any connection with it. It can hardly be supposed that if the testator had foreseen what was going to happen in 1866, he would have wished the trusts of his will to be administered thus; and it is not surprising that in 1871, when the appellant was growing up, the state of things became such that she was, or her advisers were, discontented.

On the 11th of April, 1872, the guardians announced to the board that, one of the guardians having resigned, they had appointed Madame Lydia de Jouvencel, the mother of the appellant, to be co-guardian in his room. This information was conveyed in a long and ably argued letter, which, though signed by and in the name of Mr. Malmsten, one of the Swedish guardians, bears internal evidence of having been, in part at least, drawn up by a lawyer, probably Mr. C. A. Fairbridge, who represented the appellant in the subsequent litigation. This letter may be considered as the commencement of the litigation between the appellant and the respondents.

In October, 1872, the other guardians resigned, leaving Madame Jouvencel sole guardian. An action was commenced in the name of Mr. C. A. Fairbridge as curator *ad litem* of the appellant, then a minor. On her attaining the age of twenty-one it was amended, so as to make the appellant herself the plaintiff. The object of the action was to surcharge the executors with sums stated as amounting to 28,512*l.* 2*s.* 4*d.*, which they had allowed to themselves in the accounts of the business carried on by them.

Had that action been tried out to the end and a regular judgment obtained, the plaintiff and defendants would have been bound by its result as to the matters involved in that action, but either might, if so advised, have brought other actions for other matters. But a compromise was

come to, the terms of which were sanctioned by the Court in a judgment which is as follows:—

"The Court grants judgment accordingly, in terms of the said consent paper, which is in the words and figures following, that is to say:—

"'It is hereby agreed that judgment shall be entered in favour of the plaintiff upon the following consent paper:—

"'1. That the defendants shall, on account of the charges at the rate of five per cent. on the gross sales claimed in this action, refund the sum of 21,000*l.* (including a sum of about 8,000*l.* lying undrawn in the defendants' hands), in settlement of every claim or demand that can or may be made on the defendants in connection with their administration of the estate of the late Jacob Letterstedt, and of all transactions relative thereto, or business connected therewith, up to the 31st of December, 1872, inclusive.

"'2. That the said sum of 21,000*l.* shall be taken to include any amount which may be claimable and payable to Mr. Thompson in his capacity as manager at Mariedahl, for his one-sixth share of the profits of the brewery and distillery business up to the said 31st of December, 1872, and that, subject to such claim or demand of Mr. Thompson, the said sum of 21,000*l.* be brought up and accounted for to the estate in a liquidation account to be forthwith framed, 1,000*l.*, part of the said 21,000*l.*, to be paid to Mr. Thompson forthwith in cash.

"'3. That the several liquidation and all other accounts made out up to and including the 31st of December, 1872, relative to the administration of the estate or of the business heretofore carried on in connection therewith, shall be considered finally approved and for ever settled and confirmed by this judgment.

"'4. That Miss Letterstedt, within six months from this date, shall come to an arrangement with the executors as to the future conduct of the business undertaking, and the control of the property acquired after the death of Mr. Letterstedt.

"'5. That failing such an arrangement, Miss Letterstedt shall either take over the property acquired after the death of Mr. Letterstedt, or shall authorise a sale thereof by the board of executors, failing which the board of executors shall be authorised to make a sale thereof, so that the executors may be placed in a position to carry out Mr. Letterstedt's will, and limit their administration to the property and business authorised by the will.

"'6. That the acceptance of the annuity of 100*l.* bequeathed by the testator to the board of executors shall not disentitle them to commission or remuneration from and after the 31st of December, 1872, in like manner as if the said bequest had never been made.

"'7. That no commission on gross sales be charged since this action or thereafter.

"'8. That the defendants pay the costs of this suit.'"

The board of executors rendered liquidation accounts subsequent to the 31st of December, 1872, which have been investigated in this action.

The appellant, during the interval between the compromise and the commencement of this action, succeeded in establishing a claim to "her legitimate portion." The effect of this was greatly to reduce the amount subject to the trusts of the will.

The appellant, on attaining the age of twenty-five, commenced the action in which the judgments and order now appealed against were made.

By the first eighteen paragraphs of the declaration the appellant sought an investigation of the accounts from the date of the appointment of the executors, and relief thereupon, and she claimed the right of conducting the testator's business.

By the 19th paragraph she charges the board with various acts of misconduct and malversation, mostly before 1873, and these are so expressed as to impute to the board, or at least to those for whom the board was civilly responsible, that they were instigated by a corrupt motive. And then, in the 20th paragraph, she prays that the said board may be removed from the said office of executors under the said will, and that proceedings for the appointment of another executor or executors in the place of the board may be directed to be taken.

This statement is, their Lordships think,

all that is necessary to render intelligible the first judgment appealed against.

That judgment is as follows :—

"First Judgment.

"1st. That the compromise effected in 1874, in terms of which judgment was given by consent on the 26th of November, 1874, was a final settlement of everything before the 31st of December, 1872, inclusive, and cannot in this action be reopened or set aside.

"2nd. That the accounts after the 31st of December, 1872, be referred to James Rose Innes, Esq., advocate, assisted by Mr. Syfret, the accountant.

"3rd. That plaintiff is absolutely entitled to the four-sixths of the profits claimed by her.

"4th. That plaintiff is absolutely entitled to take over the business for her life, and to manage it as she thinks proper, proper inventories to be taken, and also to the use of the ten thousand pounds sterling invested in the business.

"5th. That the question of the removal of the executors be reserved until the report is presented.

"Question of costs also reserved."

The appellant had not at any time taken steps to set aside the compromise on any ground whatever. It has been contended on her behalf that the compromise should be construed as only applying to the questions raised in the action. But their Lordships think that the Court below rightly held that it was impossible to construe the compromise, and particularly the first and third paragraphs of the compromise, in so narrow a sense. This was, indeed, hardly contested on the argument before their Lordships. They think therefore that the 1st paragraph of the judgment of the 11th of July, 1879, was right.

The 3rd and 4th paragraphs are not complained of, and their Lordships are not called upon to say more as to them than that the four-sixths of the profits to which the plaintiff is declared to be absolutely entitled must mean the four-sixths from the time when the business began to be carried on by the trustees.

The 2nd paragraph of the judgment was right, as far as it went, but at the very first meeting before the referee it appeared that it did not authorise the referee to investigate a question which, as it did not affect the liability or responsibility of the respondents, was not settled by the compromise, namely, how much of that sum which, on the assumption that every item of the accounts before the 31st of December, 1872, was correct, the respondents had in hand belonged absolutely to the plaintiff, and how much was part of those sums in which she had only a life interest. The plaintiff asked the referee to determine that question; the executors objected; the referee could not act; and the plaintiff moved the Court in the terms mentioned in the next order. On the 14th of September, 1880, it was ordered "that the plaintiff's application for an order on the said first-named defendants to make and deliver to the plaintiff an account, supported by vouchers, shewing the amount of the four-sixths share of profits, commencing with their administration of the estate as executors, be refused, with costs." This is the order secondly appealed against.

The Judges' reasons for this order nowhere appear. The argument in support of it at the bar was that the order applied for was too large, and that as prayed for it was to have an enquiry not limited, as the proposal made before the referee was limited, by having the enquiry made on the assumption that every item of the accounts before 1873 was correct, and that it was intended to open up the questions which by the first paragraph of the judgment of the 11th of July, 1879, were settled, or at least that an order granted in the terms prayed for would have had that effect.

This seems to their Lordships a sufficient ground for not granting an order in the terms prayed for, but not a sufficient ground for refusing an enquiry as to how much the plaintiff held in her own right absolutely, and how much was only to be enjoyed by her for life. Their Lordships therefore think that this order should be varied. It seems probable that when the enquiry is made it will require nothing more than a dissection of the figures; but this cannot be certainly known, and the Court should take whatever steps are necessary for making the enquiry effectual,

and do whatever is proper when its result is known. Their Lordships will afterwards state what they conceive should be the form of enquiry.

The final judgment of the 2nd of July, 1881, after confirming the final report of the referee, directs "that the prayer for removal of executors be refused, plaintiff to have her costs out of the estate up to the first hearing. Defendants (the executors) up to that time to pay their own costs, and also the costs of the reference as to accounts, and of this final hearing, with the exception of the costs of the last reference as to the 4,396*l.* 12*s.* 3*d.*, which are to be paid by plaintiff. The curator to have his costs out of the estate."

Their Lordships have felt much anxiety about this judgment.

The 19th, 20th and 21st paragraphs of the plaintiff's declaration are in the following terms:—

"19. And the plaintiff further says that the said board of executors has since its appointment as executors by the said Master as aforesaid been guilty of misconduct in its trust and malversation in its administration of the estate of the said testator, in this, to wit:—

"(1st) The said board has improperly, illegally, and in abuse and breach of its trust as executors, contrary to the true intent and meaning of the said will, and in order to profit from the commissions which would be payable to it, employed and invested part of the estate of the said testator in the said trade or business of Jacob Letterstedt & Co., and in speculations and transactions connected therewith, and gave improper credit, whereby losses have been incurred which have been charged and debited against the said estate, to its great damage and detriment.

"(2nd) The said board has wrongfully and unlawfully charged and appropriated to itself a commission of ten per cent. upon its transactions in connection with the said trade or business of Jacob Letterstedt & Co., whereas it was only entitled, even if it was right and lawful to charge a commission at all, to a commission of not more than five per cent. upon the said transactions, the amount of the commissions so improperly charged in excess of the said rate of five per cent. being a very large sum of money, of which the said board has refunded twenty-one thousand pounds, and no more.

"(3rd) That the said board has made out the accounts which have been rendered and filed by it in an improper and misleading way, in order to conceal the amount of commission really charged by it, and the said accounts have not been supported by vouchers, and the vouchers thereof have been withheld, the said accounts also having been purposely different as to the said commission from the books from which they purported to be taken.

"(4th) The said board has wrongfully and unlawfully, and in abuse and breach of its trust as executors, applied and expended large sums of money belonging to the said estate in the purchase of landed property, machinery and the erection of buildings, such expenditure not being required for the purpose of carrying out any of the provisions of the said will, and having entailed a heavy loss and charge upon the testator's said estate.

"(5th) The said board has wrongfully, unlawfully and negligently omitted to invest the annual proceeds of the said estate after deduction of such annual payments as had to be made out of the same for the benefit of the heiress and residuary heirs of the said testator, and has, in like manner, neglected and omitted to invest the share of the profits which the plaintiff was entitled to as aforesaid for the benefit of the plaintiff, as directed by the said will.

"(6th) The said board has, contrary to the true intent and meaning of the said will, and without regard to the true interests of the said estate, abused the power entrusted to it by the said will, by instituting the said board, or some of the members thereof on its behalf, to the office of manager of the testator's business in Cape Town, in order by so doing to retain and appropriate to itself the salary by the said will appointed to be paid to the manager of the said business in Cape Town.

"(7th) The said board, contrary to the meaning and intention of the said will, which directed that two commissioners should be appointed to examine the said testator's business books, accounts, stocks and other matters in his estate, has from

time to time, to wit, from the year 1862 to the year 1872, appointed two members of the said board to be such commissioners.

"20. And the plaintiff further says that, in consequence of the said acts of misconduct and malversation, and of other matters and things hereinbefore referred to, the said board has ceased to be fit and proper to be entrusted with the administration of the said estate, and has forfeited its claim to retain the office of executors under the said will. Wherefore the plaintiff prays that by judgment of this Honourable Court the said board may be removed from the said office of executors under the said will, and that proceedings for the appointment of another executor, or other executors, in the place of the said board may be directed to be taken.

"21. And the plaintiff lastly prays that, with regard to the several matters hereinbefore set forth, she may have such further and other relief as to this Honourable Court may seem fit, and that the defendant in his said capacity may be ordered to pay the costs of this suit."

The whole of the matters which have been complained of, and the whole that, if this judgment stands, may yet have to be done by the board, are matters which they had to do, as having accepted the burthen of carrying out the trusts which on the true construction of the will were imposed upon them, and so become trustees. What they had to do as executors merely, such as paying debts, collecting assets, &c., have long ago been over, and by the terms of the compromise the plaintiff cannot now say they have not been done properly. There may be some peculiarity in the Dutch Colonial law, which made it proper to make the prayer in the way in which it was done to remove them from the office of executor; if so, it has not been brought to their Lordships' notice; the whole case has been argued here and, as far as their Lordships can perceive, in the Court below, as depending on the principles which should guide an English Court of equity when called upon to remove old trustees and substitute new ones. It is not disputed that there is a jurisdiction "in cases requiring such a remedy," as is said in *Story's Equity Jurisprudence*, section 1287, but there is very little to be found to guide us in saying what are the cases requiring such a remedy—so little that their Lordships are compelled to have recourse to general principles.

Story says, section 1289, "But in cases of positive misconduct, Courts of equity have no difficulty in interposing to remove trustees who have abused their trust; it is not indeed every mistake or neglect of duty, or inaccuracy of conduct of trustees, which will induce Courts of equity to adopt such a course. But the acts or omissions must be such as to endanger the trust property or to shew a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity."

It seems to their Lordships that the jurisdiction which a Court of equity has no difficulty in exercising under the circumstances indicated by Story is merely ancillary to its principal duty, to see that the trusts are properly executed. This duty is constantly being performed by the substitution of new trustees in the place of original trustees for a variety of reasons in non-contentious cases. And therefore, though it should appear that the charges of misconduct were either not made out, or were greatly exaggerated, so that the trustee was justified in resisting them, and the Court might consider that in awarding costs, yet, if satisfied that the continuance of the trustee would prevent the trusts being properly executed, the trustee might be removed. It must always be borne in mind that trustees exist for the benefit of those to whom the creator of the trust has given the trust estate.

The reason why there is so little to be found in the books on this subject is probably that suggested by Mr. Davey in his argument. As soon as all questions of character are as far settled as the nature of the case admits, if it appears clear that the continuance of the trustee would be detrimental to the execution of the trusts, even for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee, and if there is no reason to the contrary from the intentions of the framer of the trust to give this trustee a benefit or otherwise, the trustee is always advised by his own counsel to resign, and does so. If, without

any reasonable ground, he refused to do so, it seems to their Lordships that the Court might think it proper to remove him; but cases involving the necessity of deciding this, if they ever arise, do so without getting reported. It is to be lamented that the case was not considered in this light by the parties in the Court below, for, as far as their Lordships can see, the board would have little or no profit from continuing to be trustees, and as such coming into continual conflict with the appellant and her legal advisers, and would probably have been glad to resign and get out of an onerous and disagreeable position. But the case was not so treated.

In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries. Probably it is not possible to lay down any more definite rule in a matter so essentially dependent on details often of great nicety. But they proceed to look carefully into the circumstances of the case.

The first and most obvious fact that arrests the attention is the entire change which events made in the position of the board from that which the testator assigned to it. His will is marked by much caution. He appointed three executors. If they differ, the majority is to prevail, the board voting as one person. The different branches of the business are to have each its own manager, with a substantial remuneration. Paid commissioners are to examine the stock and the accounts at frequent intervals. On failure of executors powers are given to appoint new ones. It is quite conceivable that the testator thought that, with such safeguards, it would be for the benefit of all that the board should perform, and be paid for performing, the necessary work. But it is difficult to suppose that he would wish it to be the sole executor, as it became and remained, managing one branch of the business through its own directors, and appointing no examining commissioners except persons connected with itself.

It is true that at the present time the functions of the trustees are of a simple character, perhaps extending little further than the safe custody of the trust estate. But the death of the plaintiff leaving infant children would alter that state of things; and questions might then arise both concerning the brewery business and the rest of the estate, not far differing from those which have caused so much dissatisfaction.

From the course which has been pursued below there has been no full enquiry into what took place before the 1st of January, 1873, and the charges, in the first head of paragraph 19, of *mala fides* and corrupt motive cannot perhaps be said to be disproved, but they certainly are not proved, and are such as ought not to be assumed without proof to be well founded.

The terms of the compromise bind the plaintiff to treat the result of the breaches of trust to have been such that she elected as most for her benefit to adopt them, and take the things as they stood, rather than undo the whole and take an account. Their Lordships see no reason to doubt that her advisers exercised a sound discretion in advising her to take that course, but it is enough to say that she elected to take it. And the same remark applies as to the 4th, 5th, 6th and 7th heads. The compromise equally binds the defendants in so far as they admit that a very considerable sum beyond what they were entitled to had been taken by them.

The third head seems to be true so far as that the accounts rendered to the guardians were not so full as they ought to have been, and did not disclose the amount of commission taken by the board, though before the first action, which resulted in the compromise, or at all events before the compromise itself, the appellant and her advisers had the deficient information supplied. The latter part of the third head, though, as already said, it cannot perhaps be said to be disproved as to what took place before 1873, is certainly not proved, and is of such a nature as not to be assumed without proof.

As regards the accounts after 1872, their Lordships find it difficult to understand how it was possible for men of business to think themselves entitled to the large sums charged by them in the 11th liquidation account for commission, and

disallowed under the second and third exceptions. The commission charged on the sum of 4,396*l.* 12*s.* 3*d.*, in the 13th liquidation account, and disallowed by the referee, is perhaps more extravagant still. Nor can their Lordships understand, even with all the assistance given by counsel, why the sum in question was entered as it stands in the account. It seems not to have been understood by the plaintiff's advisers, nor by the referee when he made his first report, nor by the executors' advisers when they erroneously consented to have it expunged. Again, it is impossible to suppose that the executors could really have thought themselves entitled to the sums charged by them, but never paid, for taxation in the Master's office.

It has been imputed to the executors at the bar that the disallowed charges for commission have been entered in the accounts in such a way as to amount to concealment and bad faith. Their Lordships do not accept that imputation. They think that the 11th account is clear and explanatory upon its face, however erroneous it may be in principle. So is the 13th account, to this extent, that on its face it contains an item challenging enquiry. So the nature of the charges for taxation fees is clear enough, only they are not vouched.

But though their Lordships acquit the board of concealment in these accounts, the spirit which permits such charges is naturally offensive to the appellant and unfair towards the trust estate. They can only be made by persons who are themselves exasperated by the course pursued towards them, and determined to try somehow or other to get remuneration of which they conceive themselves to have been unjustly deprived. The making of such charges, and the vexatious course pursued by the board in opposing the perfectly reasonable enquiry which the plaintiff asked before the referee, are calculated to introduce additional irritation into a relation which was disturbed enough before. And they have an important bearing on the question whether, in view of the future welfare of the trust estate, it is expedient that the board should remain trustees.

It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, where it has been caused wholly or partially by substantial overcharges against the trust estate, it is certainly not to be disregarded.

Looking therefore at the whole circumstances of this very peculiar case, the complete change of position, the unfortunate hostility that has arisen, and the difficult and delicate duties which may yet have to be performed, their Lordships can come to no other conclusion than that it is necessary, for the welfare of the beneficiaries, that the board should no longer be trustees.

Probably if it had been put in this way below they would have consented. But for the benefit of the trust they should cease to be trustees, whether they consent or not.

Their Lordships think therefore that the portion of the final judgment which is "That the prayer for removal of the executors be refused," should be reversed, and that in lieu of it the Court below should be directed to remove the board from the further execution of the trusts created by the will, and to take all necessary and proper proceedings for the appointment of other and proper persons to execute such trusts in future, and to transfer to them the trust property in so so far as it remains vested in the board. The rest of the judgment should stand.

It only remains to dispose of the costs of appeal.

Their Lordships think that the appellant not having succeeded in what was one main ground of her appeal, and having persisted in charges of fraud which the evidence does not sustain, ought to bear her own costs of the appeal. The board, having good grounds for thinking that to submit to the appeal would be derogatory to their character, and so injurious to their business, ought not to be made to pay costs; but as they are wrong in resisting the enquiry concerning the profits, and as their removal is held to be

necessary, ought to bear their own costs of the appeal. The nominal respondent, Mr. Giddy, whom the Court have appointed to represent the interests of the reversioners, should have his costs of this appeal out of the estate.

Their Lordships consider :—

1. That the judgment pronounced on the 11th of July, 1879, by the Supreme Court ought to be affirmed.

2. That the order made on the 14th of September, 1880, by the Supreme Court ought to be varied and the motion refused, giving no costs to either party.

3. That the judgment pronounced on the 2nd of July, 1881, by the Supreme Court should be varied by discharging so much as directs that the prayer for removal of the executors be refused. And that in other respects such judgment should be affirmed.

4. That the following directions should be given :—

a. The Supreme Court to take all proper steps for removing the board of executors from the further execution of the trusts of the will, and for the appointment of other and proper persons to execute such trusts in future, and for transferring to them the trust property now vested in the board of executors.

b. The Supreme Court to ascertain what portion of the property constituting the testator's estate is rightly attributable to the four-sixths of the profits to which the plaintiff is by the judgment of the 11th of July, 1879, declared to be absolutely entitled. For that purpose all proper accounts to be taken and enquiries made; but so that the accounts rendered by the defendants, the board of executors, and covered by the compromise of the 26th of November, 1874, and by the final report of the referee in this suit, be taken as finally settled, and be in no respect opened or disturbed.

c. The Supreme Court to do what is right and just when the last-mentioned portion of the testator's estate has been ascertained.

5. That the costs of the respondent R. W. S. Giddy incurred in this appeal be taxed as between solicitor and client, and be paid out of the residue of the testator's estate.

Their Lordships will humbly advise her Majesty in accordance with this opinion.

Solicitors—Venning, Sons & Manning, for appellant; Flux, Sons & Co., for respondent Broers; Watney, Tilleard & Freeman, for respondent Giddy.

1884. Feb. 9.

GEORGE ALEXANDER LAWS AND OTHERS (*appellants*) *v.* WILLIAM JAMES SMITH (*respondent*).

THE RIO TINTO.

Admiralty — Vice-Admiralty Court — Jurisdiction—Maritime Lien—Necessaries —26 Vict. c. 24. s. 10—Construction.

A Vice-Admiralty Court has no jurisdiction apart from statute to enforce any claim by way of maritime lien on a ship itself for necessaries supplied.

The Vice-Admiralty Courts Act, 1863 (26 *Vict. c.* 24), *by section* 10, *provides that the Vice-Admiralty Court shall have jurisdiction in respect of claims for necessaries supplied in the Possession in which the Court is established to any ship of which no owner or part owner is domiciled within the Possession at the time of the necessaries supplied* :—Held, *that the statute did not create a maritime lien with respect to necessaries supplied within the Possession.*

This was an appeal from a judgment of the Vice-Admiralty Court of Gibraltar.

The appellants were the owners of the British ship *Rio Tinto*, of London. They purchased the vessel, and she was conveyed to them by bill of sale by one Baldwin, the then registered owner. The appellants had no notice of any claim against her.

The *Rio Tinto* in the course of her employment put into Gibraltar in the month of December, 1881, when she was arrested at the suit of the respondent to answer a claim for certain necessaries supplied to the ship by the respondent.

The facts are stated in their Lordships' judgment.

The learned Judge gave judgment in

favour of the respondent, holding that he was the principal and not agent, and that the coals and other articles were necessaries in respect of which Admiralty proceedings could be taken, and that the respondent had a maritime lien on the ship which survived the transfer to the appellants.

From this judgment the present appeal was brought.

Cohen, Q.C., and *Phillimore*, for the appellants.—The goods were not necessaries within the meaning of the Vice-Admiralty Courts Act, 1863 (26 Vict. c. 24). There was no maritime lien, and no right to seize the vessel in the hands of innocent purchasers for value.

They referred to *The Neptune* (1), *The Alexander* (2), *The Bold Buccleugh* (3), *The Australia* (4), *The Two Ellens* (5), *The Gustaf* (6), *The West Friesland* (7), *The Ella A. Clark* (8), *The Skipwith* (9), *The Pacific* (10) and *The Mary Ann* (11).

F. M. White, Q.C., and *Bigham, Q.C.*, for the respondent.—The goods were supplied and the disbursements made on the credit of the vessel. The case is within the meaning of the Act 26 Vict. c. 24, as regards "necessaries." That statute gives the Vice-Admiralty Courts jurisdiction in respect of necessaries supplied to any ship in certain circumstances. This jurisdiction carries with it the right to a maritime lien on the ship in respect of necessaries supplied as in the present circumstances.

SIR JAMES HANNEN delivered the judgment of their Lordships (12):—

The *Rio Tinto*, a British steamer, of which George Hough was owner and master, was in the year 1879 engaged in the Mediterranean trade. In October of that year she put into Gibraltar, and, being in want of coal, obtained from a firm there, trading under the style of the London Coal Company, of which the respondent, W. J. Smith, was the managing partner, a supply to the amount of 72*l.* 10*s.* 9*d.*, and, on subsequent occasions, obtained further supplies, as follows:—

	£	s.	d.
1879, November 13th . .	107	11	8
1880, May 6th . . .	132	14	11
July 10th . . .	56	6	1

In August, 1880, she again required coals, but as the previous quantities had not been paid for, the agent of the London Coal Company refused to furnish more, but ultimately did so to the extent of 67*l.* 1*s.* 5*d.*, upon a guarantee for that amount being given by the ship's broker in London. This sum was afterwards paid.

The *Rio Tinto* did not again put into Gibraltar while Hough remained owner or master. On the 17th of September, 1880, Hough sold the vessel to one Baldwin, who, on the 14th of October, 1881, sold it to the appellants. Both Baldwin and the appellants purchased without notice of any claim against the vessel in respect of the coals supplied by the respondent's firm.

On the 27th of December, 1881, the *Rio Tinto* again put into Gibraltar, when she was arrested in the Vice-Admiralty Court of that place at the suit of the respondent for the coals supplied in October and November, 1879, and May and July, 1880.

At the hearing of the cause in February, 1883, the learned Judge of the Vice-Admiralty Court pronounced for the claim of the respondent for the coals as necessaries, holding that this claim created a maritime lien which attached to the ship from the time of the supply, into whosesoever possession she might come, and could be enforced in the Vice-Admiralty Court as against a subsequent purchaser without notice, and he further held that the respondent had not by *laches* on his part lost the right to enforce his claim.

Several questions were raised by the appellants in the Court below, which have

(1) 3 Knapp, 94.
(2) 1 W. Rob. 288.
(3) 7 Moo. P.C. 267.
(4) Swa. 480.
(5) 41 Law J. Rep. P.C. 11; Law Rep. 4 P.C. 161.
(6) Lush. 508.
(7) Swa. 454.
(8) 32 Law J. Rep. P., M. & A. 211.
(9) 10 Jur. N.S. 445.
(10) Br. & L. 243; 33 Law J. Rep. Adm. 120.
(11) 34 Law J. Rep. Adm. 73; Law Rep. 1 Ad. & E. 8.
(12) Lord FitzGerald, Sir Barnes Peacock, Sir Robert Collier, Sir James Hannen and Sir Arthur Hobhouse.

been abandoned before their Lordships. It is not now disputed that the coals were supplied by the respondent on the credit of the owners, and it is admitted that the coals were necessary; but it is contended, first, that no maritime lien attached to the ship; and, secondly, that if it did, it was lost by *laches.*

The case, in so far as it affects the jurisdiction of Vice-Admiralty Courts, is of considerable importance, and as the decisions bearing on the subject are not uniform it may be advisable to review them with some minuteness.

It was long ago decided in the Courts of common law, and finally held by this tribunal in the case of *The Neptune* (1), that material men never had any lien on the ship itself in respect of supplies furnished in England, and the language of Lord Tenterden in his treatise on shipping was adopted as correct: "A tradesman who has furnished ropes, sails, provisions or other necessaries for a ship is not, by the law of England, preferred to other creditors, nor has he any particular claim or lien upon the ship itself for the recovery of his demands," and the reason of this, as the learned author states in an earlier passage, is because the law of England never had adopted the rule of the civil law with regard to necessaries furnished here in England. It has also been held by this tribunal that Vice-Admiralty Courts had not (apart from statute) more than the ordinary Admiralty jurisdiction, "that is, the jurisdiction possessed by Courts of Admiralty antecedent to the passing of the statute 3 & 4 Vict. c. 65, which enlarged it."

It follows therefore that, apart from statute, a Vice-Admiralty Court had not jurisdiction to enforce any claim by way of maritime lien on the ship itself for necessaries supplied in the circumstances of this case.

But it is contended for the respondent that such jurisdiction has now been conferred by the 10th section of the Vice-Admiralty Act, 1863 (26 Vict. c. 24), sub-section 10, by which jurisdiction is given in respect of "claims for necessaries supplied in the Possession in which the Court is established to any ship of which no owner or part owner is domiciled within the Possession at the time of the necessaries being supplied."

Before considering the effect of this subsection, it is necessary to examine some previous kindred enactments, and the first of these is the 3 & 4 Vict. c. 65. s. 6, "the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or seagoing vessel, or in the nature of towage, or for necessaries supplied to any foreign ship or seagoing vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered, or damage received, or necessaries furnished, in respect of which such claim is made."

The effect of this enactment first came under consideration in *The Alexander* (2). There necessaries were supplied to a foreign ship prior to the passing of the Act. Proceedings were subsequently taken under the 6th section, and it was held that the Court had jurisdiction. Some remarks of Dr. Lushington have a bearing on the present question; he says, "In the first place the statute does not create a lien at all," and after reading the section he proceeds, "the Court shall have jurisdiction; it simply gives the Court jurisdiction in any and every lawful mode which the Court has the power of exercising. I wish to draw attention particularly to the fact that no lien whatever is established by the Act."

The next case to which it is necessary to call attention is *The Bold Buccleugh* (3). That was an action for damage done by a Scotch steamer to an English vessel in the Humber. The vessel was arrested at Hull, after sale to a purchaser, without notice of the claim against her in respect of the damage, and it was held by this tribunal that damage creates a maritime lien on the ship causing the damage, and that such lien travels with the thing into whosesoever possession it may come, and when carried into effect by a proceeding *in rem*, relates back to the period when it first attached. It is to be observed that this was a suit for damage, as to which there is now no doubt that it creates a maritime lien.

Upon this point their Lordships remark: —"But it is further said that the damage confers no lien upon the ship, and a *dictum* of Dr. Lushington, in the case of *The Volant* (13), is cited as an authority for this proposition. By reference to a contemporaneous report of the same case (14), it seems doubtful whether the learned Judge did use the expression attributed to him by Dr. W. Robinson. If he did, the expression is certainly inaccurate, and being a *dictum* merely, not necessary for the decision of the case, cannot be taken as a binding authority." The decision, therefore, in *The Bold Buccleugh* (3) that damage confers a maritime lien, valid against a subsequent purchaser without notice, and that this lien may be enforced under the 6th section of 3 & 4 Vict. c. 65, does not govern the present case, where the question is whether the mere conferring upon Vice-Admiralty Courts jurisdiction over claims for necessaries in certain cases carries with it the creation of a maritime lien for such necessaries.

Some passages, however, in the judgment in *The Bold Buccleugh* (3) appear to have led Dr. Lushington to the conclusion that he was bound by that decision to hold that the 6th section of 3 & 4 Vict. c. 65 did create a maritime lien in the case of necessaries as well as in the case of damage. In *The West Friesland* (7) he held that coals supplied to a foreign steamship were necessaries, and that they created a lien under 3 & 4 Vict. c. 65. s. 6, which continued, notwithstanding the sale of the ship, if there were no *laches*. And in *The Ella A. Clark* (8) the same learned Judge held that a claim for necessaries supplied to a foreign ship might be enforced by proceedings *in rem* under the 6th section, notwithstanding a subsequent and *bona fide* transfer to a British owner; and he says (p. 36):—"It is true that in *The Alexander* (2) I am reported to have said that the Act of 3 & 4 Vict. did not create a lien, though it gave a remedy against the ship. I intended to state that there might be a distinction between a provision for proceedings by arrest of the ship and the express creation of a lien, and to leave all such questions open. The case of *The Bold Buccleugh* (3), however, renders the discussion of this question useless."

With regard to these cases, their Lordships have only to repeat what was said of them in the judgment of this tribunal in the case of *The Two Ellens* (5): "These decisions may be supported upon the ground that though it is perfectly true that the only words used in the section are 'that the High Court of Admiralty shall have jurisdiction' (which words seem hardly sufficient in themselves to create a maritime lien), yet, looking at the subject-matter to which that section relates, it appears designed to enlarge the jurisdiction which the Court of Admiralty already had in matters forming the subject of a maritime lien. There are strong grounds for holding that as respects salvage and as respects collisions, which already gave a maritime lien when they occurred on the high seas, it was intended that they should also when they occurred in the body of a county equally give a maritime lien, and that being so as to salvage and collision it might well be said that necessaries immediately following, it was intended that the same rule should apply in the case of necessaries."

In the present case, however, it will be found that the creation of the alleged maritime lien is made to depend solely on the words "the High Court of Admiralty shall have jurisdiction," which, as their Lordships, in *The Two Ellens* (5), pointed out, are not sufficient in themselves to create a maritime lien.

The Admiralty Court Act, 1861 (24 Vict. c. 10), and the decisions upon it must next be considered. By the 5th section, it is enacted that the High Court shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shewn to the satisfaction of the Court that, at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales.

Dr. Lushington was at first disposed to hold, on the supposed authority of *The Bold Buccleugh* (3), that this section gave material men a maritime lien (9), but he afterwards in *The Pacific* (10) gave a considered judgment to the effect that the 5th section of the Act of 1861 confers no

(13) 1 W. Rob. 387.
(14) 1 Notes of Cases, 508.

maritime lien on the material men, but only the right to sue the ship. In *The Mary Ann* (11) he developed his views on the subject more fully. He there says (p. 11), "There is a clear distinction between a maritime lien and a claim the payment of which the Court has power to enforce from the ship and freight. A maritime lien springs into existence the moment the circumstances give birth to it, as damage, salvage, and wages; but it does not follow that because a claim may by Act of Parliament be enforceable against the parties therefore it created a maritime lien. Besides, looking at the whole Act, it is impossible to maintain that a maritime lien is created by every one of the numerous sections which commence with the words, 'The High Court of Admiralty shall have jurisdiction.' In some of the sections these words are accompanied by a proviso incompatible with a maritime lien, as is pointed out by Mr. Maclachlan in reference to the 4th section, and as the Court has held with regard to the 5th section in the case of *The Pacific* (10). So, also, it could hardly be argued that it was intended to create a maritime lien by the 8th section in favour of co-owners, or by the 11th section in favour of mortgagees. In my opinion the words 'the High Court of Admiralty shall have jurisdiction' mean only what they purport to say, neither more nor less—that is, that the Court shall take judicial cognisance of the cases provided for. By themselves the words leave open the question whether or not a maritime lien is created. The answer to this question depends on other considerations."

It appears to their Lordships that this reasoning, which was adopted by this tribunal in the case of *The Two Ellens* (5), is applicable to the question now under consideration. The 10th section of the Vice-Admiralty Act, 1863, is divided into eleven sub-sections. The 10th, relating to necessaries, is immediately preceded by one relating to claims between owners, as to which it cannot be supposed that it was intended to confer a maritime lien, yet the two sub-sections are equally governed by the same introductory words:—"The matters in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follows."

It has been argued that a different construction to that which the 5th section of the Admiralty Act, 1863, has received should be put on the 10th sub-section of the 10th section of the Vice-Admiralty Act, 1863, because by the latter the jurisdiction is made to depend on there being no owner domiciled in the Possession at the time of the necessaries being supplied. But in the absence of a domiciled owner credit is probably given to the ship, and there is therefore in such a case reason for giving the Vice-Admiralty Court of the place jurisdiction, which would include the power to proceed *in rem*, but it does not suggest a reason why the fresh incident of a maritime lien should attach from the time of the supply, a lien which is to travel with the ship into whosesoever hands she may pass, yet only capable of being enforced at one place.

Their Lordships are thus led to the conclusion that there is nothing from which it can be inferred that by the use of the words "the Court shall have jurisdiction" the Legislature intended to create a maritime lien with respect to necessaries supplied within the Possession. Adopting this view, it becomes unnecessary to determine whether or not, if such a lien had existed, it was lost by any *laches* on the part of the respondent.

Their Lordships will humbly advise Her Majesty that the judgment of the Vice-Admiralty Court be reversed, with the costs of this appeal and the costs in the Courts below.

Solicitors—Flux & Leadbitter, for appellants; Stocken & Jupp, for respondent.

1884. Feb. 6. THE UNION STEAMSHIP COMPANY OF NEW ZEALAND *v.* THE MELBOURNE HARBOUR TRUST COMMISSIONERS.

Victoria — Melbourne Harbour Trust Act, 1876, *s.* 46—*Construction—Notice of Action.*

The Melbourne Harbour Trust Act, by section 46, *provides that notice of action shall be given to any "person" before the issue of any writ for anything done under the Act. By the interpretation clause "person" shall include a corporation:*— Held, *first, that commissioners appointed under the Act were persons within the meaning of the Act; secondly, that a letter complaining of certain acts but not referring to legal proceedings was not a notice of action within the meaning of the Act.*

This was an appeal from a judgment of the Supreme Court of Victoria, overruling a demurrer to a plea of the respondents to the declaration of the appellants.

The questions raised on appeal were whether, having regard to the provision of the Melbourne Harbour Trust Act, 1876, notice in writing of the intention to sue out a writ ought to have been delivered to the respondents; and, if so, whether a notice was delivered to the respondents in accordance with such provision.

The facts are stated in their Lordships' judgment.

Davey, Q.C., *Macnaghten, Q.C.*, and *Dennistoun Wood*, for the appellants.—The letter of the 21st of October, 1881, from the agents of the appellants to the respondents was a sufficient notice within the 46th section of the Melbourne Harbour Trust Act, 1876, if any such notice was necessary. The 46th section of the Act does not apply to actions brought against the Melbourne Harbour Commissioners. The respondents, having by their secretary's letter disclaimed all liability and responsibility in respect of the injuries sustained by the *Rotorua*, waived their notice of action. They referred to *Smith* v. *The West Derby Local Board* (1), *Jones* v. *Bird* (2), *Jones* v. *Nichols* (3), and *The Eastern Counties Railway Company* v. *Marriage* (4).

Webster, Q.C., and *Malleson*, for the respondents, were not heard.

Sir Robert P. Collier delivered the judgment of their Lordships (5):—

The facts of this case, as far as they are material, may be shortly stated. The cause of action is that a vessel belonging to the plaintiffs, and going into Melbourne harbour, fell foul of a cable attached to the anchor of a dredge which was in the middle of the stream, having been placed there by the defendants, and thereby sustained considerable damage. The declaration contained two counts, one alleging negligence on the part of the defendants in mooring the dredge where they did, and the second complaining that they had not given notice whereby the danger might have been avoided. To this declaration there were many pleas by the defendants, denying their liability, and also denying most of the allegations in the declaration; and there was a further plea, in these terms:—"And for an eighth plea to the said declaration, the defendants say that the alleged grievances were committed by the defendants after the passing of the Melbourne Harbour Trust Act, 1876, and were committed by the defendants under and by virtue of the said Act; and no notice in writing of the intention to sue out the writ in this action was delivered to the defendants or left at their usual place of abode one month before the suing out of the said writ, pursuant to the said Act." The plaintiffs demurred to that plea, and also joined issue upon all the allegations contained in it. Upon the case going down for trial the jury found all the questions which may be said to relate to the merits of the case in favour of the plaintiffs; but the Judge, nevertheless, thought that a verdict should be entered for the defendants upon this plea. The jury therefore, by his direction, assessed damages contin-

(1) 47 Law J. Rep. C.P. 607; Law Rep. 3 C.P. D. 423.

(2) 5 B. & Ad. 837.
(3) 13 Mee. & W. 361.
(4) 9 H.L. Cas. 32.
(5) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

gently; and leave was given to the plaintiffs to move to enter a verdict for them for the amount of those damages. That rule, coming before the Supreme Court, was discharged, and judgment was entered for the defendants. Against that judgment the present appeal is brought.

The argument upon this appeal has been restricted to two questions, with which alone their Lordships propose to deal. The first question was whether, assuming a notice of action to be necessary, one was given; and, secondly, whether a notice of action was necessary. The 46th section of the Melbourne Harbour Trust Act is in these terms:—"All actions to be brought against any person for anything done under this Act shall be commenced within six months after the act complained of was committed, and no writ shall be sued out against nor any copy of any process served upon any person for anything done by him under this Act until notice in writing of such intended writ or process shall have been delivered to him or left at his usual place of abode by the agent or attorney of the party who intends to cause the same to be sued out, or served at least one month before the suing out or serving the same. Such notice shall clearly and explicitly set forth the nature of the intended action and cause thereof, and on such notice shall be indorsed the name and place of abode of the party intending to bring such action, and the name and place of business of his attorney or agent." Then it goes on to say that the defendant may plead the general issue, and that he may tender evidence.

It is contended that a letter written by Messrs. McMeckan, Blackwood & Co., agents of the plaintiffs, on the day after the accident occurred, is a sufficient notice of action under this Act. The letter is as follows:—"Union Steamship Company of New Zealand, Limited, Melbourne, 21st of October, 1881. The Secretary, Melbourne Harbour Trust Commissioners,—Sir, we have the honour to bring under your notice a very serious accident that happened to the *Rotorua* steamer, owned by this company. When coming up the river yesterday morning, and close to the Junction Point, and a little way below the *Platypus*, she struck the chain of that dredge, it being laid in mid-channel. The damage sustained is of an extensive character." Then the damage is specified. "The surveyors are now surveying, and may yet discover further damage. Possibly you may desire to send some of your officers to view the extent of the mischief, all of which we must hold the commissioners responsible for."

It appears to their Lordships that the Court below were right in holding that this was not a notice of action in compliance with the statute. It was clearly not intended to be. It does not give notice of any intended writ or process whatever; it does not clearly and explicitly set forth the cause or nature of the action; it does not give the name or place of business of the attorney or agent who is to bring the action. It appears to want all the necessary characteristics of a notice of action as prescribed by the statute.

Some cases have been quoted for the purpose of shewing that notices of action are not to be construed with extreme strictness, a rule to which their Lordships subscribe. Cases have been quoted in which notices of action have been upheld which would have been bad upon special demurrer, or perhaps upon general demurrer; but those cases have no bearing on the present, where the notice of action is not, in form or substance, a compliance with the Act.

The question which remains is whether or not the defendants are entitled to a notice of action. "In the construction and for the purposes of this Act the following terms shall, if not inconsistent with the context or subject-matter, have the respective meanings hereby assigned to them." Then come these words:—"'Person' shall include a corporation." It, therefore, lies upon the counsel for the plaintiffs to shew that to hold that a person in section 46 includes a corporation is inconsistent with the context or subject-matter. The argument to this effect is that section 2 declares the Act to be divided into parts, and part 2 is headed "Officers"; that when we come to part 2 in section 33 we find the heading "Officers," and a number of sections grouped together under that heading;

that therefore the word "person" in section 46 must be confined to "officers." The case in the House of Lords of *The Eastern Counties and London and Blackwall Railways* v. *Marriage* (4) has been cited as an authority for this argument on the part of the plaintiffs. It should be observed as to that case, which dealt with the construction of the Lands Clauses Act, that in that Act were several headings so drawn as to be applicable grammatically to the sections which followed them. The heading then in question was this: "And with respect to small portions of intersected land, be it enacted as follows." Then came two sections: first, the 93rd, relating to lands not being situated in a town; and then the 94th, beginning with "If such land shall be so cut through and divided." It was held by the House of Lords that "such land" referred not to land mentioned in section 93, but referred back to the heading before section 93—namely, "with respect to small portions of intersected land, be it enacted as follows."

That case appears to their Lordships to have no application to the present. Here the heading "Officers" is not such a heading as could be grammatically read into any of the sections which follow. It seems to their Lordships to have been inserted for the purpose of convenience of reference, and not intended to control the interpretation of the clauses which follow. It may be, indeed, that the fact of a clause being found in a certain group may in some cases possibly throw some light upon its meaning; but it appears to their Lordships that the construction contended for on the part of the plaintiffs that the term "officers" controls the meaning of the word "person" in section 46, applying it solely to officers and negativing its application to a corporation, is untenable. If we examine the clauses which follow under the head of "Officers," we find that they do not relate solely to officers or to their powers or to their duties. The very first section which follows this heading (section 33) gives to the commissioners power "from time to time to appoint a secretary, treasurer, and clerk, and appoint or employ such engineers, surveyors, collectors and other officers, servants and persons to assist in the execution of this Act as the commissioners shall think necessary or proper." This section therefore, under the heading of "Officers," confers not merely powers upon officers, but a most important power upon the commissioners: a power without which they would be unable to act, for a corporation can only act through its officers. There are further provisions in section 40, enabling them to appoint a harbourmaster and so on. It appears to their Lordships that, powers having been given to the commissioners under these sections to appoint officers, and they being capable only of acting through their officers, it was a very proper and convenient place to insert a section which determined under what circumstances actions should be brought against them in respect of the acts of their officers. Accordingly, section 46 appears to their Lordships to be quite in its proper place, putting the interpretation upon it that it refers to actions brought not only against officers for anything done under the Act, but against the commissioners themselves for anything done by their officers on their behalf; and all reasoning and probability would point to this having been the intention of the Legislature. It would be almost impossible to give any good reason why officers should be entitled to a notice of action, and the commissioners not; or why officers should be entitled to tender amends, and the commissioners should not.

Their Lordships will humbly advise Her Majesty that the judgment of the Court appealed against be affirmed, and that this appeal be dismissed. The appellants must pay the costs of the appeal.

Solicitors—Wild, Browne & Wild, for appellants; Wadeson & Malleson, for respondents.

1884. March 19, 29. } THE ORIENTAL BANK (*appellants*) *v.* RICHER AND CO. (*respondents*).

Mauritius — Bankruptcy — Ordinance, 1853, s. 43—Construction—Form of Adjudication.

The Bankruptcy Ordinance of Mauritius, 1853, by section 43, provides that any trader liable to become bankrupt may petition for adjudication against himself, provided that such trader shall before adjudication make it appear to the satisfaction of the Court that his available estate is sufficient to pay his creditors at least five shillings in the pound:—Held, *that the Judge is to satisfy himself as to the requisite solvency of the estate by such evidence as he thinks fit, and that no creditor can question the validity of such adjudication.*

An adjudication in bankruptcy was made against R. & Co. R. was a sole trader: —Held, *that the defect was immaterial.*

These were consolidated appeals from two judgments of the Supreme Court of the Mauritius. The first, dated the 19th of January, 1882, affirmed a judgment of the Commissioner in Bankruptcy of the 9th of May, 1881. The second, of the 27th of June, 1881, reversed a judgment of the said commissioner. In both appeals the question was as to the validity of the adjudication in the bankruptcy of Fred. Richer.

The facts were as follows:—

Frederic Richer carried on business in Mauritius under the style of "Fred. Richer & Co." He had no partner, nor was there any other person in the business.

On the 20th of January, 1881, Frederic Richer & Co. presented a petition to the Court of Bankruptcy of the Mauritius. The petition was signed "Fred. Richer & Co.," and it described the petitioners as traders within the Bankruptcy Ordinance, and as being unable to meet their engagements with their creditors. It alleged that they had filed a declaration of insolvency, and that they could make it appear that their available estate was sufficient to pay their creditors at least five shillings in the pound.

The Bankruptcy Ordinance then in force in the Mauritius by section 43 provided that "Any trader liable to become bankrupt may petition for adjudication of bankruptcy against himself: provided always, that unless such trader shall forthwith, after the filing of his petition, and before adjudication of bankruptcy thereunder, make it appear to the satisfaction of the Court that his available estate is sufficient to pay his creditors at least five shillings in the pound, clear of all charges, to be estimated by the Court, of prosecuting the bankruptcy, such petition shall be dismissed; and no further petition shall be filed by such trader in the same district without the leave of the Court first obtained for that purpose, and the adjudication on any further petition shall be subject to the like condition as aforesaid as to the available estate of the trader."

On the said 20th of January the Court of Bankruptcy adjudged Frederic Richer & Co. bankrupts.

On the 4th of March, 1881, the appellants presented a petition to the Court of Bankruptcy of the Mauritius, praying that an order might be made that, upon proof that Frederic Richer & Co. were unable to pay twenty-five per cent. to their creditors out of their available estate, the adjudication of bankruptcy should be set aside. This petition was dismissed.

The appellants also objected to the adjudication on the ground that there was no such firm as Richer & Co. The Court held this a good objection, and declared the adjudication void.

The appellants appealed from the judgment dismissing their petition.

This appeal was heard on the 22nd of December, 1881, and on the 19th of January, 1882, the Supreme Court gave judgment, dismissing this appeal.

The other appeal arose as follows:—

The official assignee in bankruptcy also presented to the Supreme Court a petition of appeal against the judgment of the Commissioner in Bankruptcy.

On the 9th of December, 1881, the Supreme Court gave judgment and reversed the decision of the Commissioner in Bankruptcy.

From these two judgments the present appeals were brought.

Davey, Q.C., and *Linklater*, for the appellants.—The order of the 20th of January,

1881, was not founded on any evidence by which the Court could be judicially satisfied, or by which it was made to appear to the satisfaction of the Court, that the available estate of the petitioners was at the time of such adjudication sufficient to the required extent. There was no finding by the Court of the sufficiency of the estate of the petitioners to the required extent. They referred to *Pennell* v. *Butler* (1) and *In re Pearse* (2). The order of adjudication did not adjudicate the respondents bankrupt.

Their Lordships intimated that they did not require to hear the respondents in the second appeal.

Cohen, Q.C., Kekewich, Q.C., and *Latham*, for the respondents.—The adjudication of bankruptcy against Frederic Richer & Co. was an adjudication against Frederic Richer. Neither the public nor the appellants were misled by the form of adjudication. It was made to appear to the satisfaction of the Court of Bankruptcy that the available estate of the bankrupt was sufficient to pay his creditors at least five shillings in the pound. The jurisdiction to set aside or annul an adjudication of bankruptcy is discretionary, and ought not to be exercised except for the purpose of doing equity which would otherwise not be done among all parties concerned. No equity has been alleged on the part of the appellants in support of their claim to set aside the adjudication. They referred to the Bankruptcy Ordinance of Mauritius, 1853, sections 43, 178, and 179, and to *Ex parte Claxton* (3).

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (4):—

Two questions are raised by the two appeals in this case. One is whether the adjudication of bankruptcy which was passed on the 20th of January, 1881, against Frederic Richer & Co., is a valid adjudication against Frederic Richer, who is the sole member of that firm. Their Lordships did not think it necessary to hear the respondents on this question. Nor do they now think it necessary to say anything, except that they concur with the Supreme Court in holding that the defect which undoubtedly appears in the order affords no ground for annulling the adjudication, because it is merely formal, and is not calculated to injure anybody.

The other question is whether, under sections 40, 43, and 50 of Ordinance No. 33 of 1853, a creditor can challenge the validity of an adjudication against his debtor, who, being a trader, has been made bankrupt on his own petition, on the ground that he has not made it appear to the satisfaction of the Court that his estate is sufficient to pay his creditors at least five shillings in the pound, clear of all charges of prosecuting the bankruptcy.

The bankrupt Frederic Richer gave, so far as appears on the face of the proceedings, no evidence of this qualified solvency of his estate except the petition and affidavit required by section 40. And it is contended that by sections 43 and 50 the Court is bound to require some further evidence, and to attain the requisite satisfaction on some judicial grounds capable of being tested by the parties concerned, and of being made the subject of contention and, when necessary, of appeal.

Their Lordships are of opinion that on the true construction of section 43 the Judge is to satisfy himself as to the requisite solvency of the estate by such evidence as he thinks fit. The proceedings are *ex parte*. The matter is one which cannot possibly be the subject of exact proof, and in most cases the proof can be but rough, provisional, or even conjectural. If the question were to be subject to dispute, nothing could solve it short of an administration, or at least an exhaustive and conclusive account, of the estate, and a long litigation might attend this preliminary proceeding. It is not provided by the Ordinance that creditors shall attend the adjudication, and it is not intended that they shall in any way put in issue the fact of qualified solvency.

That being so, is it right that they should by any process bring into contest the propriety of the Court's conclusion? It is a question of difficulty, but their Lordships think it must be answered in

(1) 18 Com. B. Rep. 209.
(2) 22 L. T. Rep. 160.
(3) Law Rep. 7 Chanc. App. 532.
(4) Lord Blackburn, Sir Barnes Peacock, Sir Robert P. Collier, and Sir Arthur Hobhouse.

the negative. Instead of saying that the qualified solvency shall be proved, the Legislature in section 43 says that it shall be made to appear to the satisfaction of the Court. The use of that language indicates rather a satisfaction in the personal discretion of the Judge than a judicial process on which issues may be taken and appeals presented. Whether the Court had reasonable ground for the satisfaction which it felt in this case is not the question. The question is, whether this particular preliminary to the adjudication can be contested so as to bring the propriety of the adjudication itself into discussion. Their Lordships concur with the Supreme Court in thinking that the adjudication is conclusive upon the point.

Their Lordships will humbly advise her Majesty that both appeals should be dismissed, and the appellants must pay the costs.

Solicitors — Murray, Hutchins & Stirling, for appellants; Freshfield & Williams, for respondents.

1884. April 9. } THE QUEEN *v.* WILLIAMS.

New Zealand—Executive Government—Harbour—Control of—Ship and Shipping—Negligence — Liability — Crown Suits Act, 1861.

In a proceeding under the Crown Suits Act, 1861, *it appeared that a harbour was under the management of the Executive Government of the colony, which appointed the harbour officials and received rates for the use of staiths and wharves, but no harbour dues:*—Held, *that such Executive Government was liable for negligence in permitting an obstruction to remain in the harbour by which the plaintiff's ship was injured.*

This was an appeal from a judgment of the Supreme Court of New Zealand, given on a petition of right.

The petition alleged that the steamship the *Westport*, of which the respondent was the owner, on the 16th of February, 1882, entered the harbour of Westport, New Zealand, and, under the direction of the harbour-master, was moored at the staiths or wharf in that harbour; that the harbour was under the control of the Government, which appointed the harbour-master and other officials having control over the harbour and staiths, and over the movements of all vessels therein, and receiving the dues payable in respect of vessels frequenting the port; that the respondent paid dues in respect of the use by the said steamer of the staiths; that while alongside the said staiths, and being laden with coal and general cargo in the usual manner, the said steamer settled with the fall of the tide on a snag lying at or near the bottom of the water, and was so damaged thereby that she sank, and that the harbour-master was at the time of the happening of the events well aware of the existence of this snag, and of the danger to vessels using the said staiths.

The appellant pleaded to the petition.

The respondent joined issue on the pleas.

The jury found that the steamer settled upon the snag while she was alongside the staiths; that the Government would have been aware of the existence of the snag, if proper steps had been taken by them after communication with the harbour-master.

The verdict was thereupon entered for the respondent.

A rule was obtained, calling upon the respondent to shew cause why the verdict of the jury should not be set aside and a new trial had; or why the verdict should not be entered for the appellant. This rule was discharged.

From this judgment the appeal was brought.

Cohen, Q.C., and *Cutler*, for the appellant. —It was not the duty of the Executive Government to ascertain the state of the harbour. There was no evidence of any negligence which occasioned the damage, or of any omission or commission done by the Executive Government in, upon, or in connection with a public work within the meaning of the Crown Suits Act, 1861. They referred to *The Mersey Docks* v.

Gibbs (1), *Forbes* v. *The Lee Conservancy* (2), *The Lancaster Canal Company* v. *Parnaby* (3), and *Carlton* v. *The Franconia Steel Company* (4).

Ollivier (New Zealand Bar) and *Cracroft*, for the respondent.—It was not necessary to aver or prove absolute knowledge on the part of the Government. It was proved that the Government had negligently suffered a snag to remain for years alongside the wharf to the great danger of vessels using the same. They referred to *Winch* v. *The Thames Conservators* (5), *Jolliffe* v. *The Wallasey Local Board* (6), *Hammond* v. *St. Pancras* (7), *Wilson* v. *Halifax* (8), and *Richardson* v. *The Great Eastern Railway Company* (9).

SIR RICHARD COUCH delivered the judgment of their Lordships (10) :—

The respondent in this appeal presented in the Supreme Court of New Zealand, under the provisions of an Act in force in that colony, called the Crown Suits Act, 1861, a petition of right, in which it was stated that the suppliant was the owner of the steamship *Westport*, and on the 16th of February, 1882, the steamship entered her Majesty's port or harbour of Westport, in the county of Buller, in the colony of New Zealand, and, by and under the direction of her Majesty's harbour-master, was moored at the staiths or wharf in the harbour erected by her Majesty's Executive Government in the said colony for the use and accommodation of vessels frequenting the port; that the harbour at Westport is a tidal harbour, at or near the mouth of the Buller river, and is under the control and management of her Majesty's Executive Government in the colony, which appoints the harbour-master and all other officials exercising control over the same and the staiths and wharves, and over the movements of all vessels therein, and receives the dues payable in respect of vessels frequenting the port and using the accommodation therein provided; that all wharfage and tonnage rates, and all other rates and dues in respect of the harbour and of the staiths or wharves therein, are payable to and received by the authorities appointed to receive the same by and on behalf of her Majesty's Executive Government; and on the 4th of March, 1882, 1*l.* 1*s.* 11*d.*, by way of dues in respect of the use by the *Westport* of the staiths or wharf and harbour, was paid on behalf of the suppliant, and a receipt given for the same; that prior to the 16th of February, 1882, the *Westport* had frequently visited the harbour, and been laden with coal and general merchandise in the usual and customary manner at the port; that the rise and fall of the tide was at the time of the happening of the events after mentioned eleven feet or thereabouts; that on the 17th of February, 1882, while alongside the wharf or staiths, and being laden with coal and cargo in the usual and customary manner at the port, the *Westport* settled with the fall of the tide upon a snag lying at or near the bottom of the water of the harbour, and was so greatly damaged thereby that the steamer became filled with water and sank to the bottom of the harbour alongside the wharf or staiths; that her Majesty's Executive Government in the colony, and the harbour-master and other officials exercising authority at the port, were at that time, and for a long time previously had been, well aware of the existence of this snag, and of the danger and risk incurred by vessels moored at and using the staiths or wharf or frequenting and navigating the harbour in consequence thereof, but had negligently and improperly suffered the same to remain there, and no steps whatever had been taken by the Executive Government or the harbour-master or other officials to indicate to masters of vessels frequenting the port the existence of the hidden danger occasioned by the

(1) 35 Law J. Rep. Exch. 225; Law Rep. 1 H.L. 93.
(2) 48 Law J. Rep. Exch. 402; Law Rep. 4 Ex. D. 116.
(3) 11 Ad. & E. 223.
(4) 99 Mass. 216.
(5) 43 Law J. Rep. C.P. 167; Law Rep. 9 C.P. 378.
(6) 43 Law J. Rep. C.P. 41; Law Rep. 9 C.P. 62.
(7) 43 Law J. Rep. C.P. 157; Law Rep. 9 C.P. 316.
(8) 37 Law J. Rep. Exch. 44; Law Rep. 3 Exch. 114.
(9) Law Rep. 1 C.P. D. 343.
(10) Lord Blackburn, Sir Barnes Peacock, Sir Richard Couch and Sir Arthur Hobhouse.

position of the snag, or to warn the master of the *Westport* thereof, and the master was at the time of the accident wholly ignorant of the existence of such danger; that, in consequence of the injuries to the steamer, the suppliant had suffered loss and damage to the amount of 1,500*l.* and upwards.

The solicitor of the Supreme Court of New Zealand, duly authorised and acting for and on behalf of her Majesty, by his first plea denied all the material allegations in the petition of right, and in his second and third pleas he alleged that there was water to the height of eleven feet covering the snag at low tide, and the *Westport*, when fully laden, might and could easily and without damage have been hauled over and above the snag in any state of the tide in the harbour whilst loaded, so as to float in the same depth of water fore and aft, but the master improperly loaded the forehold of the steamer so as to cause the bow of it to sink to a depth of 13 ft. 6 in. or thereabouts, and the stern to sink only to a depth of 8 ft. 6 in. or thereabouts, and then, and whilst the steamer was so loaded, negligently, carelessly, and improperly hauled the steamer from the berth where she was lying (second plea), and on his own responsibility, and without communication with the harbour-master, carelessly, negligently, and improperly moved the steamer from the berth where she was lying (third plea), and whilst the steamer was being so hauled and moved she struck upon the snag and was injured. The replication to the second and third pleas denied the allegations in them in the terms of the allegations.

At the trial of the issues of fact by a special jury at Nelson, New Zealand, on the 21st and 22nd of December, 1882, the allegations in the petition preceding the allegation of what happened on the 17th of February were either admitted or found to be true, except the allegation that the harbour was under the control and management of the Executive Government, the issue as to this being struck out, and except also the allegation of the receipt of rates and dues, as to which it was found that there are no harbour dues, and the 1*l.* 1*s.* 11*d.* was received for wharfage and tonnage dues.

The other issues, with the findings of the jury thereon, were as follow:—

"9. Did the said steamship *Westport*, on the 17th day of February, 1882, while alongside the said wharf or staiths, settle with the fall of the tide upon a snag lying near or at the bottom of the water of the said harbour?—Yes, on the obstruction called the vertical snag.

"10. Was the said steamship so greatly damaged thereby that she became filled with water and sank to the bottom of the said harbour alongside the said wharf or staiths?—Yes.

"11. Was her Majesty's said Executive Government, at the time of the happening of the events in the said petition mentioned, and for a long time previously, well aware of the existence of the snag which caused the damage, and of the danger and risk incurred by vessels moored at and using the said staiths or wharfs, or frequenting and navigating the said harbour, in consequence thereof?—No; but after the communication from the harbour-master, if proper steps had been taken promptly, they would have been aware.

"12. Did her Majesty's said Executive Government negligently and improperly suffer the last-mentioned snag to remain alongside the said staiths or wharf, to the great danger of vessels moored at the said staiths or wharf?—Yes.

"13. Did her Majesty's said Executive Government take any steps, or did the harbour-master or other officials take any steps, to indicate to masters of vessels frequenting the said port the existence of the hidden danger occasioned by the position of the said last-mentioned snag, or warn the master of the said steamship *Westport*?—No.

"14. Was the master of the said steamer *Westport*, at the time of the happening of the events in the petition mentioned, wholly ignorant of such danger?—Yes.

"15. Could the said steamer *Westport*, when fully laden, have easily and without danger been hauled over and above the said snag in any state of the tide in the said harbour, whilst loaded, so as to float in the same depth fore and aft?—No.

"16. Did the master of the said steamship *Westport* load the forehold of the said steamer so as to cause the bow of the

said steamer to sink to a depth of 13 ft. 6 in. or thereabouts, and the stern of the said steamer to sink only to a depth of 8 ft. 6 in. or thereabouts?—Admitted. Yes.

"17. Did the master of the said steamer negligently, carelessly, and improperly haul the said steamer from the berth where she had been placed by the harbour-master; and did the said steamer then, and whilst being so hauled, strike upon the said snag and suffer the injury in the petition mentioned?—No.

"18. Did the master of the said steamer move the said vessel carelessly, negligently, and improperly?—No.

"19. Did the master of the said steamer move her on his own responsibility, and without communication with the said harbour-master, and unknown to the said harbour-master?—Yes; but there was an implied permission, according to the usage of the port.

"20. Has the suppliant, in consequence of the injuries mentioned in the said petition, suffered damage and loss; and, if so, to what amount?—1,500*l.*"

On the 19th of January, 1883, the Supreme Court of New Zealand granted a rule to shew cause why the verdict should not be set aside, and a new trial had, upon the grounds:—

"That the verdict is against the weight of evidence on issue 9.

"That the qualification of the answer to issue 11 is against the weight of evidence, and that the answer to issue 11 does not sufficiently distinguish the snag referred to.

"That the verdict is against the weight of evidence on issues 12, 17, 18, and 19.

"That the learned Judge improperly rejected evidence of the harbour regulations.

"That the learned Judge misdirected the jury upon the question of negligence.

"That the question of negligence ought not to have been left to the jury.

"That the learned Judge ought to have directed the jury that no duty was cast upon the Government of the colony to keep the harbour of Westport clear of snags of which the Government and its officers were ignorant.

"Or, in the alternative, why the verdict should not be entered for the Government, upon issues 11 and 12, upon the above grounds."

This rule was discharged by the Supreme Court on the 18th of May, 1883, and the present appeal is from that order. The reasons for the appeal, as stated in the appellant's case, are:—

"1. Because, under the circumstances alleged in the petition, or proved at the trial, it was not the duty of the Executive Government to ascertain whether or not snags might be lying in the river.

"2. Because there was no evidence in support of the allegation imputing to her Majesty's Executive Government any negligence which occasioned the damage, nor of any wrong or damage done by the Executive Government in, upon, or in connection with a public work, within the meaning of the Crown Suits Act, 1861.

"3. Because the said harbour regulations shew that the master, in moving his steamer without the consent or instructions of the harbour-master, ought to be considered as having done so at his own risk.

"4. Because the case proved and relied on was inconsistent with that made by the petition."

Before proceeding to discuss what their Lordships consider the real question on the merits, they think it best to dispose of some other questions which have been raised. The harbour regulations for the ports of New Zealand, made by Order in Council, provide that the master of every vessel shall anchor or moor where the harbour-master or person deputed by him may direct, and he shall not unmoor or quit the anchorage, nor shall he haul his vessel alongside any public pier, wharf, or jetty, without having previously obtained permission from the harbour-master or his deputy to do so, and any master offending against this regulation shall be liable to a penalty not exceeding 5*l.* The evidence of the mate of the *Westport* was that she crossed the bar of the harbour on the morning of the 16th of February, 1882, and made fast to the coal staiths under the direction of the harbour-master, with the forehatch under No. 1 shoot, head up the river; that the following day, having finished loading the forehold, about one or two P.M., they slacked astern about 25 feet,

to take in a few packages of cargo from the gangway, which they generally do whilst they are loading coal; when they went about 25 feet astern the vessel struck on a snag, which, as the tide fell, made a hole in her bottom. The *Westport* measures about 116 feet from the forehatch to the stern, counting to about the centre of the hatch, and her beam is 23 feet. The snag struck her about 5 feet abaft the midship section on the starboard side of the keel, which was outside as she lay, and at the garboard streak, where she would be drawing about 10 ft. 9 in. of water. As the head ropes were slacked, the current necessarily set the bow out, there being a slight curve in the river at that point. The bow was about 8 feet off the staiths when she struck, and the stern about 15 feet. Opposite the point where she struck, she was about 13 feet from the staiths, and the edge of the hole in her bottom being about 1 foot from her keel, the snag must have been about 25 feet from the staiths.

It may be convenient to notice here the variance between this evidence and the allegation in the petition that the steamer was alongside the wharf or staiths when she settled with the fall of the tide, upon which the 9th issue was framed. As to this, the Supreme Court in its judgment says, "There was, therefore, a variance from the case stated in the petition, inasmuch as the steamer was damaged whilst shifting her berth. But there was no application for a nonsuit upon this or any other ground. Had the objection been made it would have been properly met by the allowance of an amendment in the petition. The question whether the vessel had been moved was not really, but only formally, in issue between the parties. As regards the suppliant's conduct, the only questions raised were, whether the vessel had been moved negligently so as to cause or contribute to the damage, or illegally. These were the questions which the parties went down to try." And as to the 9th issue, the Court says, "The objection here seems to be that the jury have found that the *Westport* was damaged" while alongside the wharf, "the damage having in fact occurred whilst her position was being slightly altered. But as the vessel was only allowed to move a few feet along the wharf, remaining always connected with it by her head and stern lines and springs, it appears to us that she may properly be said to be injured while alongside." Their Lordships think that the finding of the jury may be so understood, and then it is in accordance with the evidence.

The question whether the steamer was negligently and improperly moved was raised by the 17th and 18th issues. These were answered by the jury in the negative. The evidence of the mate was that the harbour-master directs the movements of the vessel if he happens to be there, but he had never objected to their dropping astern to the gangway; that they moved the vessel without his directions and he never complained; it is the custom of the port, of all ports; when the harbour-master knew of the accident, he did not object that the ship had been moved without his permission; and the harbour-master himself, in answer to the question by the Court, "Was it imprudent to move her?" replied only that it was unusual. The only ground upon which it can be contended that these issues ought not to have been answered in the negative is that there was a breach of the harbour regulations. The jury found upon the 19th issue that the master of the steamer moved her without communication with and unknown to the harbour-master, "but there was an implied permission according to the usage of the port." There was evidence upon which the jury might reasonably find this, and that under the circumstances the master did not negligently and improperly move the vessel. The Supreme Court thought that the defence that the master was doing an illegal act prohibited under a penalty, and that no action could lie for damage to the vessel consequent upon the illegal act, was not raised by the pleas. Their Lordships see no reason to differ from this.

The main question is, whether there was a breach on the part of the Executive Government of that duty which the law would have cast upon private persons maintaining the staiths or wharf and inviting ships to visit them in the same

manner in which the Executive Government are shewn to have done.

In the *Lancaster Canal Company* v. *Parnaby* (3), where a company had, under powers given by an Act of Parliament, made a canal for their profit, and opened it to the public upon payment of tolls to the company, it was held by the Court of Exchequer Chamber that the common law imposed a duty upon the proprietors to take reasonable care, so long as they kept it open for the public use of all who might choose to navigate it, that they might navigate without danger to their lives or property. This decision was approved of in *The Mersey Docks Trustees* v. *Gibbs* (1), in which it was held that, if the cause of the injury was a bank of mud in the dock, and if the defendants, the trustees, by their servants had the means of knowing that the dock was in an unfit state, and were negligently ignorant of it, they neglected their duty, and did not take reasonable care that it was fit.

The present case differs from *The Lancaster Canal Company* v. *Parnaby* (3) and *The Mersey Docks Trustees* v. *Gibbs* (1) in that there are no harbour dues and the public have a right to navigate subject to the harbour regulations; but the harbour is under the control and management of the Executive Government, which has authority to remove obstructions in it. The staiths and wharves belong to the Executive Government, which receives wharfage and tonnage dues in respect of vessels using them. These are collected by the railway authorities appointed by the Government, and the manager of the railway department directs where the vessels which are to load with coals shall be placed. It appears to their Lordships that this case is within the principle upon which the above cases were decided, and, upon the facts proved, they are of opinion that the law imposes a duty upon the Executive Government to take reasonable care that vessels using the staiths in the ordinary manner may do so without danger to the vessel.

The principal evidence on this question is the harbour-master's, and his letters to the Marine Department of the Government of New Zealand. He first became aware of the existence of a snag near the place where the *Westport* struck at the end of January, 1882, by a vessel called *The Ladybird* touching on it. He sent down a man who was not a professional diver to examine it, and reported to the Secretary of the Marine Department. This report is as follows:—

"Harbour Office, Westport,
"27th January, 1882.

"Sir,—I have the honour to inform you that a snag has been recently found at the coal staiths, and lies in the way of ships loading. At low-water spring tides it has about eleven feet on it. Formerly it was not much in the way, but larger and deeper vessels come now for coal, hence the difficulty. Several vessels have been on it lately, but sustained no damage. It lies between the two upper shoots (Nos. 1 and 2), which are most used.

"I had the snag examined yesterday by a diver, who reports it to be about three feet in diameter. The but-end is buried under the stones forming the protective wall; the balance, outside of pile, projects into the river about twenty feet (20), and immediately under ships' bottoms. Ten feet of this is the trunk or barrel of the tree, the rest a branch or limb. The trunk touches one of the piles of the staiths, and lies so close to the bottom as to be embedded half its diameter in the gravel, causing slinging to be difficult, if it were any use. But I think it would be unwise to attempt raising it by lifting upward, as the chances are that, if it did rise, a large number of the stones would be dislodged, with every chance of their rolling out, as the bottom is rather steep at the staiths. The diver reports two large stones nearly out to the end of tree already, and I have felt others when sounding at the staiths, thus shewing that they roll out fast enough themselves, without being molested. In any case, I think the chances of lifting the snag in this way would be very doubtful, except it broke; it must be a long way under the stones now. Consequently, I should like the marine engineer's opinion as to its removal.

"If the snag lay midway between the piles, which are some fourteen feet apart,

I think it could be cut or severed by small charges of dynamite, but I would not use it in this case without first getting Mr. Gorman's opinion. He is the person that travels for Nobel's Dynamite Company, and explains how to use it. I got much useful information from him (*re* dynamite) when snagging the river. I think he will recommend cutting the snag in question about two feet or more outside the pile. I know how he does this.

"I think Mr. Gorman did a similar job at Hokitika, where the wharf had been built over a large snag, which gave the harbour authorities much trouble for many years.

"A diver, with his dress, could cut it off I dare say. My diver has no dress, neither does he understand its use, but simply undresses and goes down. I found him very useful when snagging the river.

"I have the honour to be, Sir,
"Your most obedient servant,
"S. A. Leech, Harbour-Master.
"The Secretary,
"Marine Department, Wellington."

To this there was the following reply:—

"Marine Department, Wellington,
"9th February, 1882.

"Sir,—I have the honour to acknowledge the receipt of your letter of the 27th ultimo, with reference to a snag recently found at the coal staiths; and in reply, to inform you that this snag is not to be blasted, but that you are authorised to have the same cut off about two feet from the piles.

"I have the honour to be, Sir,
"Your obedient servant,
"H. S. McKellar, for Secretary.
"The Harbour-Master,
"Westport."

On the 14th of February the harbour-master again wrote as follows:—

"Harbour Office, Westport,
"14th February, 1882.

"Sir,—I have the honour to acknowledge the receipt of your letter M. 82/264, No. $\frac{770}{31}$, acknowledging receipt of mine, *re* snag at the coal staiths, authorising me to have it cut off about two feet from the piles, as blasting is not permitted. In reply, I beg to state that I know of no way to cut it except by a diver going down and doing it. The diving dress that was here was returned to Wellington, where it was urgently required.

"I can see no other way of doing it except by putting the punts on it at low water. Should it rise with the tide, then I fear, as already expressed in last letter, that the stones would get dislodged and roll out under ships' bottoms. This would be bad. Certainly it might break off short about the pile, or just where it goes under the stones. If so, all would be right, and the danger would be removed; but my experience of snags is that they are very strong, and usually in a good state of preservation when under water. Consequently, I dread that heaving the punts down to this snag at low water is fraught with much danger, for reasons already given, and that I cannot recommend it in consequence. However, whether it is decided to send the diver, or use the punts, I shall be glad to see something done as soon as possible towards removing this danger.

"S. A. Leech, Harbour-Master.
"The Secretary,
"Marine Department, Wellington."

No notice of danger was given until after the accident to the *Westport*, when the harbour-master put up a notice on the piles, "Snag here, 11 feet 6 inches low-water springs."

On the 8th of May, 1882, a diver employed by the Public Works Department went down and found a horizontal snag, about 40 feet long, projecting from the staith, the butt of the tree being underneath it. From 25 to 30 feet from the staith he came across the stump of a tree that had been felled, standing up vertically, and projecting about 18 inches above the horizontal snag, which was resting up against it. This was the snag which caused the damage to the *Westport*. If she had gone on the horizontal one, she would have forced it down, as there was two feet of water under it.

Their Lordships think that there was here evidence from which, if it was properly left to them, the jury might properly conclude that the Executive Government, by their servant the harbour-master, had, before this accident, notice of a danger at this point, such as to make it a want of reasonable care in them not, by their

servants, to enquire what that danger was, and to warn a vessel in the position of the plaintiff's vessel of the existence of danger there. If such a warning had been given it would have been the fault of the plaintiff's servants if they let the vessel pass over that spot at low water. Their Lordships do not think it was necessary to go so far as to prove that the servants of the Government knew the precise nature of the danger, or whether the projecting snag was, as it turned out to be, an independent vertical snag, or, as the harbour-master seems to have supposed, a branch or limb attached to the horizontal snag. The real question was whether, if they had not neglected the duty which the law cast on them to take reasonable care, they would not have known of the existence of a danger against which they should give warning.

Their Lordships have felt much embarrassed from not being told what directions were given to the jury. It may be that there was some misdirection, or that the right point was not presented to the jury, but that is not shewn, and it lay on the appellants to shew it.

The findings of the jury on the 11th and 12th issues amount to a finding that there was negligent ignorance, and their Lordships are by no means prepared to say that there was not evidence upon which the jury might reasonably come to that conclusion. Even if such evidence had not existed, still there was evidence that the Executive Government had before the accident to the *Westport* sufficient notice of the danger to make it their duty to give warning of it, which was not done till after the accident. This was a breach of the duty to take reasonable care.

It remains to notice one other question which was raised by the counsel for the appellant—namely, whether the negligence which occasioned the injury was within the provisions of the Crown Suits Act, 1861. Section 37 of that Act provides that,—

"No claim or demand shall be made upon or against her Majesty, under this part of this Act, unless the same shall be founded upon or arise out of some one of the causes of action hereinafter mentioned, and for which cause of action a remedy would lie if the person against whom the same could be enforced were a subject of her Majesty,—

"(1.) Breach of any contract entered into by or under the lawful authority of the Governor on behalf of her Majesty, or of her Majesty's Executive Government in the colony, whether such authority be express or implied.

"(2.) A wrong or damage independent of contract, done or suffered by or under any such authority as aforesaid in, upon, or in connection with a public work as hereinafter defined.

"(3.) For the purposes of this provision 'public work' means any railway, tramway, road, bridge, electric telegraph, or other work of a like nature used by the Government of the colony or constructed by such Government out of moneys appropriated by the General Assembly, and the revenues derived from which form part of the general revenue of the colony."

In *Jolliffe* v. *The Wallasey Local Board* (6) it was held that an omission to do something which ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to "an act done or intended to be done" within the meaning of a clause requiring a notice of action, and their Lordships think that the negligence in this case to take reasonable care is a wrong done by or under the authority of the Executive Government. They also think that the staiths are "a work of a like nature" within the meaning of subsection 3. Indeed, the staiths seem to be an adjunct to the railway which is used for carrying coals to be loaded on board the vessels in order to facilitate the loading, and, in the view their Lordships take of the case, the negligence is in connection with them. The Supreme Court say that their verdict might possibly not have been the same as that of the jury, but they could not say the finding was contrary to law. Their Lordships also might possibly not find the same verdict, but the question of negligence was one which the jury was to determine, and no sufficient ground has been shewn for

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setting aside their verdict. Their Lordships will therefore humbly advise her Majesty to affirm the decision of the Supreme Court, and to dismiss the appeal, and the costs thereof will be paid by the appellant.

Solicitors—J. & R. Gole, for appellant; Baker & Nairne, for respondent.

1884. April 7. HETTIHEWAGE SIMAN APPU AND OTHERS (*appellants*) *v.* THE QUEEN'S ADVOCATE (*respondent*).

Ceylon—Roman-Dutch Law—Reconvention—Suit by the Crown—Counter-claim by Subject.

Although by the Roman-Dutch law which is in force in Ceylon the law of reconvention which prevails in suits between subject and subject does not apply in suits by the Crown, yet by usage and the Ordinance No. 11 *of* 1868 *the right of the subject to sue the Crown for claims arising out of contract has been established, and the subject may now set off a claim in a suit by the Crown, and the Court may give judgment for the balance found to be due.*

There were cross appeals from a judgment of the Supreme Court of Ceylon, confirming in some respects, and in others reversing, a judgment of the District Court of Kandy, in an action brought by the Queen's Advocate against three natives of Ceylon.

The facts are stated in their Lordships' judgment.

Marten, Q.C., and *Stock*, for the appellants.—By the Roman-Dutch law which is the law of Ceylon, reconvention or counter-claim is in force, and this law prevails in a suit by the Crown. The right of the subject to sue the Crown is expressly recognised by Ordinance No. 11 of 1868, and this Ordinance is a re-enactment of another Ordinance passed in 1856. Although a judgment against the Crown cannot be enforced by execution, yet the subject has a right to have the judgment of a Court, and is in the same position as a subject in England who proceeds against the Crown by petition of right.

They referred to *Van Leeuwen* (1), *Boulston's Case* (2), *The Bankers' Case* (3), *The Attorney-General* v. *Buckeridge* (4), *Colebrooke* v. *The Attorney-General* (5), *Thomas* v. *The Queen* (6), *Dean* v. *The Attorney-General* (7), and *Casbert* v. *Ward* (8).

The Attorney-General (*Sir H. James*), *Romer, Q.C.*, and *F. H. Jeune*, for the respondent.—The subject cannot sue the Crown. Such a proceeding would be contrary to custom, and would contravene the dignity of the Crown. Where such a right exists, it is by petition of right, and process cannot issue against the Crown or its officers. No such right exists by the Roman-Dutch law.

They referred to *Thompson's Institutes of the Laws of Ceylon* (9), *Palmer* v. *Hutchinson* (10), *Fraser's Case* (11), *Hendrie* v. *The Queen's Advocate* (12), *Fernandez* v. *The Queen's Advocate* (13), and *Ruding* v. *Smith* (14).

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (15):—

The facts which give rise to these suits took place in the year 1878. Appu and Francisco Fernando, the two principal defendants, purchased of the Crown agents two arrack rents, each of which gave them a monopoly of selling the native liquors, arrack rum and toddy, for the year ending on the 30th of June, 1879, within a

(1) Commentaries, ed. 1820, pp. 116, 661.
(2) 3 Co. Rep. 212.
(3) 14 State Trials, 1.
(4) Hard Rep. 75.
(5) 7 Price, 145.
(6) 44 Law J. Rep. Q.B. 9; Law Rep. 10 Q.B. 31.
(7) 1 You. & C. 197.
(8) 6 Price, 411.
(9) Vol. i. p. 300.
(10) 50 Law J. Rep. P.C. 62; Law Rep. 6 App. Cas. 619.
(11) Creasy's Rep. 10.
(12) 4 Sup. Ct. Rep. 76.
(13) 4 Sup. Ct. Rep. 77.
(14) 2 Con. Rep. 371.
(15) Lord Blackburn, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse

certain district called a rent division. The purchase-money was to be paid in twelve instalments, and was secured by mortgage bonds given by the defendants to the Queen. The third defendant Juan Fernando is a surety for the others.

In the earlier action, numbered 83,316, the Queen's Advocate on behalf of the Crown sued for Rs. 29,783. 34 cents, and in the later action, numbered 83,320, for Rs. 30,216. 66 cents, being respectively the balances due on account of the two rents. The defendants do not deny that the balances sued for are unpaid, and would be due if there were nothing to set off against them. But they allege that the Crown has broken its engagements to them in connection with the arrack rents, and that they have thereby suffered damage which they are entitled to have ascertained in these actions and to enforce against the Crown in reconvention.

In action 83,316 the district Judge found that the defendants had suffered damage to the extent of Rs. 4,500, and therefore that the Crown could recover only the amount of rent minus the damage, viz. Rs. 25,283. 34 cents. In action 83,320 he found that the defendants had suffered damage to the extent of Rs. 70,000, which exceeded the claim of the Crown by Rs. 39,783. 66 cents. He then set the results of the two actions against one another, and made a single decree condemning the Crown to pay the defendants the sum of Rs. 14,500. 32 cents.

The Crown appealed to the Supreme Court in both actions, and that Court made separate decrees. In action 83,316 they held that the defendants had not made out any case in reconvention, and they decreed to the Crown the whole sum claimed for it. In action 83,320 they held that the defendants had proved damages to the extent of Rs. 37,031. 25 cents, which exceeded the claim of the Crown by Rs. 6,814. 91 cents, and for that sum they gave the defendants a decree.

The defendants have now appealed to her Majesty in Council from both decrees of the Supreme Court, seeking in effect to restore the decision of the district Judge. And the Crown has appealed in action 83,320, seeking to have the claims in reconvention entirely disallowed.

The claims made in reconvention in action 83,316 may be stated as follows:— That the profits of arrack taverns were diminished by the action of licensed liquor shops, which are shops for the sale of imported liquors; that the sums offered for arrack rents diminished accordingly; that Francisco Fernando addressed the Governor to that effect; that the Governor, in answer, stated, on the 15th of May, 1878, that, "The Government will aid in the suppression of the sale of intoxicating liquor of every kind in districts where the establishment of arrack taverns is prohibited"; that on the 10th of June, when the rent was put up to auction, Mr. Templer, the Government agent, promised to the bidders present that licences would not be issued to retail liquor in places where there were no taverns within the arrack districts; that on the 12th of June, 1878, Mr. Le Mesurier, the Government assistant agent, urged Appu to purchase the rent, and promised him not to issue licences for liquor shops in certain places; that on the 14th of June, when the rent was actually purchased by private contract, Mr. Templer said to Appu, "You will have a good profit, because licences to sell other liquors would not be issued"; and that licences had been issued in contravention of the four promises so made.

With regard to the Governor's statement of the 15th of May, the evidence as to the amounts bid for the rents leaves it at least doubtful whether the defendants placed any reliance on it. But whether they did or did not, it was no contract. Fernando was not offering anything to the Government, or bound by anything when the Governor had written to him. There was no bargain then in contemplation. The Governor did nothing more than indicate the line of policy which the Government desired to take, just as he did when he told Mr. Templer, as that gentleman states in his cross-examination, that, "if the planters wanted to go in for temperance they shall have it; that if they would allow no taverns on their estates, the Government would not allow liquor shops." Moreover there is not any statement by the Governor that licences shall not be issued in any given place; he only says

that Government will aid in the suppression of the sale of liquors; and for aught that appears the Government have always been willing to do that, so far as circumstances admit.

The next promise relied on was that of the 10th of June. It was not alleged in the defendant's answer, and the Supreme Court disregarded it on that account. But evidence on the point was given on both sides, and it was discussed before the district Judge and decided by him in favour of the defendants. Their Lordships therefore think it more satisfactory not to exclude the discussion on appeal.

Three witnesses depose that Mr. Templer used the expressions which the defendants rely on, Appu himself, Pedro Peresa, and Mathes Peresa. But Appu and Mathes do not understand English, and Pedro only understands English a little, though he says that he knew what the agent said. He adds, "the agent spoke in English, and the Kachcheri Mudaliyar interpreted to us." It is clear that if the parties relied on what was then said, they must have relied on the interpreter.

Mr. Templer does not deny that he said something on the point. He does not recollect it, but says that if he said anything he simply conveyed the Governor's instructions. What those were he stated on cross-examination in the terms above quoted.

We are therefore reduced to the evidence of the interpreter. He says, "On that occasion the Government agent asked me to tell the renters that licences would not be issued to sell foreign liquors in places where taverns had been suppressed." But immediately afterwards he adds, "One of the bidders came forward and asked the agent whether he would promise not to issue fresh licences for the sale of foreign liquor, and the agent said he could make no such promise."

The probability is that there was some conversation on the point—no doubt an important point to bidders—and that Mr. Templer made some declaration of the intentions of the Government similar to what is stated by him, and in the letter of the 15th of May. But it is very difficult to say that any undertaking which any bidder had a right to rely on was given on behalf of the Crown. Be that as it may, it is certain that no bargain was struck on this occasion. Only Rs. 140,000 was bid, and the auction failed. An entirely fresh negotiation with Appu was entered on, which resulted in his offering Rs. 181,300, and in the sale of the 14th of June. The talk of the auction-room on the 10th cannot be imported into the private contract on the 14th.

The promise which Mr. Le Mesurier is said to have made on the 12th of June was in the course of a private conversation between himself and Appu. He flatly denies it. It is in itself an improbable thing to have come from a subagent. Appu's credit is so damaged by his denial of a letter of the 8th of June which he undoubtedly wrote, that there is no difficulty in disbelieving him, and their Lordships concur with the Supreme Court in so doing.

The last promise relied on is that of the 14th of June. Appu, who was in the room and transacting the business with Mr. Templer, swore to what he said in the terms which have been stated above. Francisco says that he stood at the door and overheard what was said, but he does not mention any declaration by Mr. Templer on the point in question. According to him, Appu said that, "as he knew then the Governor's reply, he would not mind giving" a larger price. We have then to go to the interpreter, on whom Appu must rely for what Mr. Templer said, and he tells us that "no mention whatever was made about licences." Mr. Templer also denies any promise.

Even if stronger evidence had been given of the promises relied on by the defendants, there are two circumstances which would shake it greatly. One is that in the letter referred to which was written by Appu to the Government agent on the 8th of June, he attributes the low prices offered for arrack rents, not to the competition of liquor shops, but to a combination of those who have "a strong hold on the arrack farms," and who have, he says, formed themselves into a body for the auction of the 10th instant. And he takes credit to himself for acting in the interests of the Government, and

against those of the ring, by making higher offers, but begs that his proceedings may be kept quite secret. The other circumstance is that the defendants never insisted or even asked that this important undertaking should be introduced into the written contract, which was signed on the 14th of June, and was supplemented by the mortgage bond of the 28th of June.

Their Lordships do not find it necessary to discuss the questions much dwelt on at the bar, whether the case made by the defendants is a collateral contract, or a representation on which the defendants entered into the written contract. They think with the Supreme Court that no contract or representation is proved at all in reconvention, and that the appeal in action 83,316 wholly fails.

In action 83,320 precisely the same case was made in reconvention with respect to liquor licences, and the district Judge awarded Rs. 30,000 as damages. The Supreme Court, thinking the case was not proved, struck out the whole of that sum. They also reduced the sum of Rs. 40,000 awarded by the district Judge as damages on another part of the case in reconvention which has yet to be stated. But the appeal of the defendant is confined to the question of the liquor licences. It therefore wholly fails for want of proof.

Their Lordships now turn to the appeal of the Queen's Advocate, which raises questions both of fact and law, and they will take the facts first.

The 6th article of the conditions of sale, which constitute the written contract between the parties, runs as follows:—"Licences to sell arrack rum and toddy by retail at the taverns enumerated in the list hereto annexed, marked A, shall be granted on the application of the renter to such persons as he may desire." List A is a list of twelve towns, villages, or places numbered consecutively from 1 to 12. The ninth place is entered in the list as "9, Kadyanlina"—a town of some little importance.

There had previously been a tavern licensed for a house in the bazaar of Kadyanlina, whether numbered 9 or not does not appear. The house was built on land belonging to Mr. Elphinstone, a coffee planter, who owned the whole bazaar and a large part of the neighbouring land. He was hostile to taverns, and having got possession of the site, forbad the use of it as a tavern. The exact time at which this was done does not appear, but it was some time before the abortive auction of the 10th of June.

In his evidence Mr. Templer tells us how the matter stood. He says, "One of the taverns in the Bulatgama Division was Kadyanlina tavern. On the 10th of June I distinctly told the renters who had assembled to bid that there would be difficulty in getting a site for a tavern there; that Mr. Elphinstone would not allow any site in the Kadyanlina bazaar to be used for the purposes of a tavern. . . . . I told the renters that if they could get another suitable site within that locality I would give them a licence."

On the 29th of June a licence was issued by Mr. Templer to sell arrack rum and toddy during the month of July "at the tavern No. 9 situate at Kadyanlina, and at no other place." This licence was ineffectual, because neither the old site nor any other site could be procured in July. What is important to observe is that the licence was issued for something called "Tavern No. 9 at Kadyanlina," though it was well known to the Government agents that the very house which was formerly used for the purpose was not then used or available for it.

At this point the case is complicated by attempts on the part of the defendants to transfer the Kadyanlina tavern to Maskeliya, some twenty miles off. They presented several petitions for this purpose, which were refused. The only bearing which these proceedings have on the question now to be decided is that the Government, which steadily refused to grant any licence for Maskeliya, admitted that one should be granted for the neighbourhood of Kadyanlina.

In the month of August the defendants procured a site in the town of Kadyanlina, which adjoined the site of the old tavern. On the 30th of August they applied to the Government agent to "grant the licence No. 9 for the tavern of Kadyanlina, to establish the same tavern at the adjoining place where it has been established in the last year." Similar petitions were pre-

sented on the 3rd and the 17th of September.

What was done on these petitions appears from the evidence of Mr. Le Mesurier and Mr. Templer. Mr. Templer was under the impression, which has been found by both Courts to be incorrect, that the new site was not in Kadyanlina, but a mile or a mile and a half distant. He evidently thought that he was not bound to grant any licence for a tavern so situated, except under the promise that he made to the renters on the 10th of June, which left him to be the judge what was a suitable site. He reported to the governor that he never refused to license another site for a tavern in the vicinity of the old tavern at Kadyanlina. But, in point of fact, he did so refuse. He refused a licence to the defendants for the site they had procured, for the sole reason that Mr. Elphinstone objected to it, and therefore the site was not suitable.

The question now is whether by that refusal the Crown has broken the written contract. It is said that the answer of the defendants sets up only a collateral parol contract, which is not proved in fact, and could not be proved in point of law. But it appears to their Lordships that the answer relies on both contracts, and that the defendants, though unable to make anything of the Maskeliya episode, have a right to rest their case on the written contract.

The 6th article is capable of two constructions, one being that licences were to be granted for certain houses then used as taverns, and the other being that licences were to be granted for a tavern in each of the specified towns and places in List A. Neither construction is quite literal, and to determine which is the true one it is necessary to look at the subject-matter of the contract. Now, to the knowledge of both parties, there was at the time of the contract no tavern at all at Kadyanlina, and the contract would have no meaning if it were taken to refer to an existing tavern. The parties must be deemed to have contracted on the 14th of June with reference to existing facts; and the language of Mr. Templer on the 10th of June shews that the salient facts present to their minds were that there was no immediately available site for a tavern, no reasonable chance of procuring the old site, and a difficulty in procuring another site in Kadyanlina.

So reading the contract, the clear duty of the Crown was to grant a licence when a site in Kadyanlina was procured, unless it could be proved that some substantial objection existed to it. The Crown had not, as Mr. Templer supposed, an arbitrary discretion to say what was a suitable site. Mr. Elphinstone's hostility was not a substantial objection to the performance of a legal obligation to grant a licence for a site in Kadyanlina, as indeed Mr. Templer himself must have thought when he did grant the licence for the old site.

On these grounds their Lordships concur with both the Courts below in thinking that there has been a breach of contract. It remains to consider the legal objections urged by the Crown against the defendants' right to recover damages.

The argument on behalf of the Crown may be thus condensed. A claim in reconvention is in substance nothing else than a cross action brought by the defendant against the plaintiff; to sustain such a claim the defendants must shew that they can maintain a suit against the Crown; no such right existed under the Roman-Dutch law, which is the law of Kandy; even if it did it would have been abrogated by the conquest of the country, being one of those rights which must of necessity be varied by a change of sovereign power; there has been no subsequent establishment of the right; a practice of suing the Crown has arisen, but it is irregular and cannot be upheld unless warranted by law, and no law can be found which confers the right. Even if there were the right of suit, it is argued that it would not warrant such a decree as the Court has made; for though the Court says that a judgment against the Crown does not carry execution with it, it has in fact given execution to the extent of the debt due to the Crown by setting off the two claims and so wiping out the debt. These arguments were enforced at the bar with great learning and ability.

The maritime provinces of Ceylon were part of the dominions of the United Provinces, and were acquired by conquest by

the British Government in 1799. The law in force before the time of the conquest must have been the Roman-Dutch law of Holland, probably with some modifications. On the conquest the King of England might have abrogated the old law and have introduced the English law. He did not do so, but continued the old law with modifications, reserving to the king and to the East India Company power to make other alterations. The interior of the island, then the kingdom of Kandy, was not conquered till 1818, after which the law of the maritime parts was extended to the interior.

One of the laws of Ceylon, which differed from the English law, was that of reconvention, and it is not disputed that, as between subject and subject, that law of reconvention is in force. The question now is whether the same law is in force between the Judge Advocate suing for the Crown and a subject.

It may be assumed in favour of the Crown that for the purpose of trying whether the counter-claim can be made at all there is no distinction between a claim in reconvention and an original action. And if it cannot be shewn that the right to bring such an action existed under the Roman-Dutch law, a legal foundation for it, if found at all, must be found in transactions subsequent to the conquest of the country.

The defendants contend that there was a power given by the Roman-Dutch law to sue the officer of the Government on behalf of the Government, and that this power has been preserved, the style of the officer alone being changed into the Queen's Advocate. They do not allege that when judgment is given for the subject against the Queen's Advocate execution can be issued against his person or private property, nor even against the property or revenue of the Government; but they say that, though the judgment cannot be thus enforced, the subject has a right to have it ascertained by a Court of justice that he has a debt which the Government ought to pay, and to have the benefit of the strong moral pressure that there would be on the Government to provide for payment of the debt thus ascertained. Such a suitor would thus be much in the position of a subject in England who on a petition of right has obtained a judgment in his favour, but can only obtain the fruits of his judgment by the grace of the Crown and the assistance of Parliament.

In support of the plaintiff's argument, it was contended that it was not possible to suppose that any government, or at least any monarchical government, would submit to the indignity of being sued even through its officers. That, however, is not an impossible supposition. In *The King's Advocate* v. *Lord Dunglass* (16) Lord Medwyn enters into a very learned discussion as to the early history of the mode of procedure in Scotland. He states at p. 325 that in very early times the King of Scotland sued in person in civil suits, but that afterwards he sued by his officers of state; and at p. 333, when discussing how the king was to be sued, Lord Medwyn says:— "His officers are cited instead of the sovereign, and to defend his interest, on the ground that it was thought improper to call the King personally into Court. The rule, however, was not extended to the Regent. Thus the Queen Regent is defender in a reduction of a forfeiture in 1558, John Duke of Albany in 1525, and James Earl of Arran in 1543, along with the Treasurer and Advocate, or (and?) the donators, the persons having interest."

There certainly seems no more antecedent reason why the Counts of Holland should be exempted from suit through their officers than existed for the exemption of the King of Scotland. And though it is very likely that whilst great potentates, like the Dukes of Burgundy and the Kings of Spain, were Counts of Holland, it would not be very safe to sue them, yet when the United Provinces became independent, suitors might find themselves more favourably placed.

But whatever speculations may be made upon these points, their Lordships cannot advise her Majesty that such was the Roman-Dutch law, unless it is shewn to them that it was so. And neither the researches of counsel nor their own have enabled their Lordships to attain any certainty on the subject.

(16) 15 Court of Sessions Cases, 1st series, p. 314.

That a very extensive practice of suing the Crown has sprung up is certain. In his judgment in the case of Fernando, which was decided immediately before the present case came under review, Chief Justice Cayley says, "The practice has been recognised in many hundreds of decisions, and long acquiesced in by the Crown, and, so far as I am aware, has not till now been called in question." It was recognised by the judgment of the Court in *Fraser's Case* (11), decided in the year 1868.

In Mr. Justice Thompson's *Institutes of the Laws of Ceylon*, after referring to the English Petition of Right, he says that, the Ceylon Government having no Chancellor, a suit against the Government has been permitted, and the Queen's Advocate is the public officer who is sued on behalf of the Crown. He then points out that, except in land cases, this action gives little more than is given by the Petition of Right, for no execution can issue against the Crown or against the Queen's Advocate.

It is true that in *Palmer* v. *Hutchinson* (10), it is stated that no practice of the Court can confer upon it any power or jurisdiction beyond that which is given to it by the charter or law by which it is constituted. But in Natal, where that case arose, the jurisdiction of the Court was founded on an Ordinance dated the 10th of July, 1857, and extended only over all her Majesty's subjects, and all other persons whomsoever, residing "and being within the colony." And this case possesses a feature which is not found in *Palmer* v. *Hutchinson* (11)—namely, that the practice of suing the Crown has been recognised by the Legislature.

The 117th section of Ordinance No. 11 of 1868 runs as follows:—

"All suits instituted in the name of the Queen's Advocate on behalf of the Crown, for the recovery of any debt, damages, or demand, or to obtain possession of any property, provided the amount or value in dispute exceeds ten pounds, may be instituted and prosecuted, at the discretion of the Queen's Advocate, in the District Court held at the principal town of the province in which the defendant resides, or in which the cause of action shall have arisen wholly or as to any part, or in which such property is situated; and all suits instituted by any private party against the Queen's Advocate wherein the amount or value in dispute exceeds ten pounds shall, unless the Queen's Advocate consents to forego such right, be instituted and prosecuted in the District Court held at the principal town of the province in which the act, matter, or thing in respect of which any such suit shall be brought shall have been done or performed, or in which the property in dispute is situated; and the said District Court shall have cognisance of and power to hear and determine such suits as if the cause of action had arisen within the district."

It appears to their Lordships that the latter part of that section would be deprived of its meaning unless it is held that, in the view of the Legislature, suits might be instituted by private persons against the Queen's Advocate for the recovery (amongst other things) of debts and damages. It is said that to give that meaning to the Ordinance would prove too much, for it would include actions for damages *ex delicto*, which, as everybody admits, cannot be brought against the Crown. But it does not follow that because the words are wide enough to include actions *ex delicto*, they must do so. They are not words adapted to confer a new right, or to establish a new kind of suit. They are only regulative of rights and proceedings already known, and they must be construed according to the state of things to which they clearly refer. They can therefore receive a full and sufficient meaning without extending them to actions *ex delicto*, but they cannot receive a full and sufficient meaning, indeed it is difficult to assign them any substantial operation at all, unless they embrace actions *ex contractu*.

It is then certain that prior to 1868 there was such an established practice of suing the Crown that the Legislature took it for granted and regulated it. The same state of things must have existed prior to 1856, for the Ordinance of 1868 is only a re-enactment of an earlier Ordinance of 1856. Earlier Ordinances still have been referred to, but their Lordships do not discuss them, because, though they speak of suits in which the Crown is defendant, and though it is the opinion of the Supreme

Court, and is probable, that they refer to claims *ex contractu*, it is not clear that they do so.

It would certainly be inconvenient that there should be no means of obtaining the decision of a Court of justice in Ceylon on claims made by the subject against the Crown. Yet there are none if actions of this kind do not lie, for the Petition of Right does not exist in the colony. In the present case the consequences would be somewhat startling. The Crown would be able to sue the subject on one portion of a contract, while itself violating with impunity another portion of the same contract; and the subject must pay for the breach which he has committed, while recovering nothing for the breach by which he has suffered. Whatever may be the exact origin of the practice of suing the Crown, it was doubtless established to avoid such glaring injustice as would result from the entire inability of the subject to establish his claims. And finding that the Legislature recognised and made provision for such suits at least twenty-eight years ago, their Lordships hold that they are now incorporated into the law of the land.

It remains to consider whether the decree does right in setting off the defendants' claim against that of the Crown, or whether separate judgments should be given for each amount, leaving the sum awarded to the defendants to be recovered only as a matter of grace on the part of the Crown.

It is true that the course taken by the Courts below does practically give an effective execution against the Crown to the extent of the Crown's claim against the defendants. But though the Crown is thereby prevented from recovering its debt, it is not exposed to the indignity attendant upon process of execution. Some analogy to this question may be found in the cases which decide that a foreign sovereign may be sued in the Court of Chancery by way of defence or cross-claim, though he cannot be sued unless he himself has first invoked the jurisdiction of the Court. In the case of *The Duke of Brunswick* v. *The King of Hanover* (17), the principle of this doctrine was very fully discussed by Lord Langdale. In the course of his judgment he says :—

"The liability of a foreign sovereign to be sued in a case where he himself was suing here was considered to be founded upon the principle that by suing here he had submitted himself to the jurisdiction of the Court in which he sued. The decision is in accordance with the rules of the civil law. The *reconventio* is a species of defence, and '*Qui non cogitur in aliquo loco judicium pati, si ipse ibi agat, cogitur excipere actiones et ad eundem judicem mitti.*'"

A further analogy may be found in the practice of the Court of Admiralty affecting cases of collision where both parties are to blame. There, though the damage suffered by each is ascertained by a separate process, no monition is issued except for the moiety of the balance awarded to the one who has suffered the greater damage. And that rule is followed though the amount actually payable by one of the parties is materially affected by it, as it would be when the other is insolvent. This principle is illustrated by the case of *The Stoomvaart Maatschappy Nederland* v. *The Peninsular and Oriental Steam Navigation Company* (18).

In this case the suit is brought by the Queen's Advocate on a contract made between the Crown and a subject. The parties have contracted on a footing of equality. It would lead to injustice if, when brought into Court by the Crown, the subject should not be able to resist payment of anything but that which, on the balance of the debt or damage recoverable under the contract by each party, is found due to the Crown.

The Crown suffers no more indignity or disadvantage by this species of defence than it would suffer by defences of a more direct kind, which yet would be clearly admissible: as, for instance, if a breach of contract sued on by the Crown were excused on the ground that the wrongful action of the Crown itself had led up to that breach.

For these reasons, their Lordships consider that the judgment of the Supreme Court on this point must be upheld.

(17) 7 Beav. 1.

(18) 52 Law J. Rep. P., D. & A. 1; Law Rep. 7 App. Cas. 795.

Siman Appu v. *The Queen's Advocate.*

The result is that each of the three appeals ought to be dismissed with costs, and their Lordships will humbly advise her Majesty accordingly.

Solicitors—Baker & Nairne, for appellants; Sutton & Ommanney, for respondent.

1884. March 1. } JONMENJOY COONDOO *v.* WATSON.

Bengal—Power of Attorney—Construction — Power to transfer — Power to pledge.

A power of attorney authorised the holder "from time to time to negotiate, make sale, dispose of, assign, and transfer" a promissory note:—Held, *that the holder had no authority to pledge the note.*

This was an appeal from the High Court of Judicature in Bengal.

The suit was commenced by the respondent to recover possession from the appellant of a certain promissory note of the Government of India for Rs. 20,000, with interest and damages for the detention of the same, on the ground that the note belonged to him, and had been illegally and improperly indorsed and delivered by his attorney to the appellant as security for a loan to the said attorney, and that at the time the appellant received the same he knew that such attorney had no power or authority to pledge the same.

The appellant by way of answer to the plaint alleged that the note in question was duly and properly indorsed and transferred to him by Messrs. Nicholls & Co., financial agents in Calcutta, acting within the terms and scope of a power of attorney, to secure an advance of Rs. 19,000 made by the appellant, and that, so far as the appellant was concerned, the transaction was *bona fide* and in the ordinary and usual course of business.

The case was heard by a Judge of the High Court, who was of opinion that the power of attorney given by the respondent was sufficient to cover the transaction, and dismissed the suit with costs.

On appeal to the High Court this judgment was reversed, and the appellant was ordered to indorse and deliver over to the respondent the Government promissory note in question, with interest and costs.

The facts are stated in their Lordships' judgment.

From this judgment the present appeal was brought.

Rigby, Q.C., and *Rolland*, for the appellant.—The indorsement and transfer of the promissory note to the appellant was expressly covered and authorised by the power of attorney given by the respondent to Nicholls & Co. The conduct of the appellant was *bona fide*. He had no notice of any fraud in the matter. Fraud could not under the circumstances affect the appellant as the *bona-fide* holder of the note. They referred to *The Bank of Bengal* v. *Macleod* (1), *The Bank of Bengal* v. *Fagan* (2), and *Ireland* v. *Livingston* (3).

Cohen, Q.C., and *Woodroffe*, for the respondent.—The holder of this power of attorney had no authority to borrow money in the respondent's name or to pledge the promissory note. The appellant acquired no title to the note. The power must be strictly construed. A power to sell does not confer a right to pledge. They referred to *Storey on Agency*, sections 68 and 77, *Attwood* v. *Mullings* (4), *Goodwin* v. *Robarts* (5), *Glyn* v. *Baker* (6), *The Bank of Bengal* v. *The East India Company* (7), and *Crouch* v. *The Crédit Foncier of England* (8).

SIR RICHARD COUCH delivered the judgment of their Lordships (9):—

The respondent in this appeal, George Alder Watson, is a Surgeon-Major in her

(1) 5 Moo. Ind. App. 1.
(2) 5 Moo. Ind. App. 27.
(3) 41 Law J. Rep. Q.B. 201; Law Rep. 5 H.L. 395.
(4) 4 B. & Ad. 1.
(5) 45 Law J. Rep. Q.B. 748; Law Rep. 1 App. Cas. 476.
(6) 13 East, 509.
(7) Bignell, 87.
(8) 42 Law J. Rep. Q.B. 183; Law Rep. 8 Q.B. 374.
(9) Lord Blackburn, Sir Barnes Peacock, Sir Robert Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

Majesty's Indian Army, and the appellant is a merchant at Calcutta. On or about the 18th of October, 1878, the respondent deposited with Messrs. Nicholls & Co., described in the plaint as a firm carrying on business as bankers and financial agents in Calcutta, promissory notes of the Government of India, amounting to Rs. 37,500, for which a receipt was given to him by Nicholls & Co., headed "safe custody receipt." One of those notes was for Rs. 20,000. This note was payable to Watson, his executors, administrators, or assigns, or his or their order, and was subsequently exchanged by Nicholls & Co. for a similar note, apparently that the interest might be received at Calcutta instead of Peshawar, where the interest on the former note was payable; but no question arises upon this.

On the 18th of October, 1878, Watson executed and gave to Nicholls & Co. a power of attorney in the following terms:—

"Know all men by these presents, that I, George Alder Watson, Surgeon-Major, 19th Regiment Bengal Lancers, do make, constitute, and appoint William Nicholls and George Augustus Thompson, of Messrs. Nicholls & Co., financial agents, Calcutta, jointly and severally to be my true and lawful attorneys and attorney, for me and in my name and on my behalf, from time to time to negotiate, make sale, dispose of, assign and transfer, or cause to be procured and assigned and transferred, at their or his discretion, all or any of the Government promissory notes, or other Government paper, bank shares, or shares in any public company, and other stocks, funds, and securities of any description whatsoever, now or hereafter standing in my name or belonging to me, or any part or parts thereof respectively. And also for me, and in my name, and on my behalf, from time to time, at their or his discretion, to contract for, purchase, and accept the transfer into my name of any Government promissory notes or other Government paper, bank shares, or shares in any public company, and other stocks, funds, and securities of any description whatsoever, now or hereafter standing in the name or names of, or belonging to, any other person or persons. And also to receive all interest and dividends due, or to accrue due, on all or any of such stocks, funds, and securities. And for the purposes aforesaid, or any of them, to sign for me and in my name, and on my behalf, any and every contract or agreement, acceptance, or other document. And to sign, seal, and deliver for me, and as my act and deed, any and every deed which they or he may think expedient."

This power of attorney, when produced in evidence, had on the back of it a seal of the Public Debt Office, Bank of Bengal, shewing that it had been registered there, and the new note had on the back two like seals, with the same register number, shewing that a power of attorney had been registered for the receipt of interest and for sale. Watson never gave to Nicholls & Co. any authority to deal with the notes except the power of attorney. The note when produced bore two indorsements, "G. A. Watson, by his attorney, G. Aug. Thompson," "G. A. Watson, by his attorney, G. Aug. Thompson." The former of these indorsements appeared to apply to a receipt for a half year's interest, which was indorsed on the note.

In December, 1880, a broker named Goberdhone, employed by Nicholls & Co., applied to the gomastah of the appellant for a loan to Watson of Rs. 19,000 on the pledge of a Government security for Rs. 20,000, and subsequently brought the note for Rs. 20,000. Being asked by the gomastah under what authority the name of Watson was signed by Thompson, he said there were two seals on the paper, and from the two seals it appeared that Mr. Thompson had authority to draw interest and sell the paper, so he had full authority. The gomastah then sent the money by one Koylash Chunder Roy to the office of Nicholls & Co., telling him to enquire whether the paper was actually signed by Thompson. What then took place is stated by Koylash Chunder Roy thus:—"In the office the broker took the paper from Ameer Singh's durwan, and gave it to Mr. Thompson. Mr. Thompson gave that paper to me, and said he wanted money on that paper. I asked him if the signature on the paper was his signature, and if he had pledged the paper with

Ameer Singh Shumar Mull. He said, 'Yes.' I told him, 'The paper stands in the name of Mr. Watson, why do you want money on this paper, and what authority have you to sign for Mr. Watson?' Mr. Thompson said, 'I have got a power of attorney. If you wish to see the power of attorney I can shew it to you.' He said he had a power of attorney from Watson to manage all his business, and he had authority to receive money on that paper. Then he executed a promissory note, in which he signed for Mr. Watson, gave the promissory note to me with the Government promissory note, and took the money from me." In the account-books of the appellant the transaction was entered as a payment of Rs. 19,000, on account of pledge of company's paper. Nicholls & Co. having failed, the respondent brought a suit in the High Court of Calcutta, praying that the appellant might be decreed to indorse and deliver up the promissory note for Rs. 20,000 to him, and to pay him all such interest as the appellant might have received thereon, and that the appellant might, if necessary, be restrained from parting with it.

The Judge before whom the case came on for disposal dismissed the suit, with costs. On appeal to the High Court in its appellate jurisdiction this decision was reversed, and a decree was made in the respondent's favour, from which there is this appeal to her Majesty in Council.

It was properly admitted by the learned counsel for the appellant in the argument before their Lordships, that the appellant, having notice that the indorsement was under a power of attorney, was in the same position as if the power of attorney had been perused, and if that power did not authorise the indorsement he must fail. But the counsel contended that it gave an authority to pledge the Government note, and relied upon the case of *The Bank of Bengal* v. *Macleod* (1). It is necessary to look at the facts and argument and judgment in this case somewhat minutely.

The action was one of detinue and debt brought by James William Macleod against the Bank of Bengal. In 1841 the plaintiff sent from England a power of attorney, constituting and appointing Alexander Donald Macleod (his brother), and Christopher Fagan, carrying on business in Calcutta as agents under the firm of Macleod, Fagan & Co., his attorneys, jointly and separately in their individual names, or the name of the firm, and on his behalf, "to sell, indorse, and assign, or to receive payment of the principal, according to the course of the treasury, of all or any of the securities of the East India Company for shares in their public loans," to which he was entitled. A. D. Macleod applied to the Bank of Bengal for a loan upon his own account, and offered as a security Company's paper, No. 13397, for Rs. 5,000. This note bore the following indorsement:—"Pay to G. J. Gordon, Esq., Secretary, Union Bank, or order J. W. Macleod, by his attorney, A. D. Macleod." "Pay to A. D. Macleod, attorney to J. W. Macleod, order G. J. Gordon, Secretary, Union Bank. J. W. Macleod, by his attorney, A. D. Macleod." The secretary of the bank, upon inspection of the note and the last indorsement, requested to see the power of attorney, which was shewn to him. The bank then took a further indorsement on the note from A. D. Macleod, in these words:—"Pay to the Bank of Bengal, or order A. D. Macleod," and the required loan was then made by the bank in the ordinary course of business. Two days afterwards a further loan of Rs. 17,100 was made by the bank to A. D. Macleod, upon his depositing two other notes and indorsing them, and his statement that they were his own property.

A verdict was found for the plaintiff, and a rule which was granted to shew cause why that should not be set aside and a nonsuit entered, or why a verdict should not be entered for the defendants, or a new trial granted, having been discharged, the defendants appealed to her Majesty in Council. The difference between this case and that before their Lordships may be here noticed. The power of attorney contained the word "indorse." The loan was made to A. D. Macleod on his own account, and the bank took an indorsement on the note from him on his own account, and not as attorney for J. W. Macleod. In this case, and in the similar case of *The Bank of*

Bengal v. *Fagan* (2) (the judgment being given in both cases), it was argued for the appellants that A. D. Macleod had power to indorse the notes; that "sell, indorse, and assign" might be read either distributively or conjunctively, and the power to indorse was not auxiliary only, but was the real object of the power. For the respondent it was argued that the indorsement mentioned in the power of attorney was for the purpose of authorising A. D. Macleod as agent for the purposes of a sale, and a power to sell did not give a power to pledge, that the word "indorse" was controlled by the context, and the words must be taken collectively. The following passages from the judgment delivered by Lord Brougham shew the ground of the decision :—"Thus, the main and fundamental question is, had Macleod & Co. authority to indorse under the power of attorney, which is in the same words in both cases. It is to 'sell, indorse, and assign, or to receive payment of the principal according to the course of the treasury, and to receive the consideration money and give a receipt for the same.' It is contended for the respondent that the words 'sell, indorse, and assign' used conjunctively cannot be used in the disjunctive, but that the only power given to indorse is one ancillary to sale, and that we are to read it as if it were power to sell, and for the purposes of selling to indorse. This construction is endeavoured to be supported by referring to the variation of 'or' for 'and' immediately following 'or to receive the money at the Treasury.' We are unable to go along with this view of the instrument. The variation is clearly owing to a new subject-matter being introduced. . . . Shall we then say that a power to 'sell, indorse, and assign' does not mean a power to sell, a power to indorse, and a power to assign, and would not such a negative or exclusion be doing violence to the plain sense of the words? If we adopt this exclusive construction we must hold that these words not only give no powers to indorse without selling, but also that they give no power to sell without indorsing, and we must suppose an agent acting under such a power to be entirely crippled. . . . It appears to us that the rational and the natural construction is the one which represents a power to 'sell, indorse, and assign' as a power to sell, a power to indorse, and a power to assign—so that these acts may be done apart or together, and that the powers are conveyed conjointly and severally."

It seems to have been thought by two of the learned Judges of the High Court that it was laid down in this case, as a rule of construction, that words used in a power of attorney to express the objects of the power are always to be construed disjunctively. Their Lordships cannot agree in this view of the case. The words there may have been used disjunctively, but they do not see any reason why the rule laid down by Lord Bacon, "*Copulatio verborum indicat acceptationem in eodem sensu,*" which is intended to aid in arriving at the meaning of the parties, should not be used in construing a power of attorney as much as any other instrument.

The power of attorney in the present case is not in the same form as that in *The Bank of Bengal* v. *Macleod* (1). It does not contain in express words a power to "indorse." If it had, the question would have been whether there was anything to prevent it from being a power in the discretion of the donee of it to indorse the note and so convert it into one payable to bearer whenever he thought fit to do so for any purpose. But in this power the indorsement is not authorised in express words, but is authorised if it comes within the meaning of the words, "And for the purposes aforesaid to sign for me, and in my name and on my behalf, any and every contract or agreement, acceptance, or other document." The "purposes aforesaid" are these :—

"From time to time to negotiate, make sale, dispose of, assign, and transfer, or cause to be procured and assigned and transferred [there seems to be a mistake in words here, but it does not make any difference in the meaning], at their or his discretion, all or any of the Government promissory notes or other Government paper, &c., and also for me, and in my name and on my behalf, from time to time, at their or his discretion, to contract for, purchase, and accept the transfer into

my name of any Government promissory notes or other Government paper, &c."

The appellant's counsel relied mainly upon the word "negotiate," and also upon "dispose of." In order to see what was intended by these words, they must be looked at in connection with the context, as well as with the general object of the power. This appears to their Lordships to have been to sell or purchase for Watson Government promissory notes and other securities, not to borrow or lend money upon them. If the word "negotiate" had stood alone, its meaning might have been doubtful, though, when applied to a bill of exchange or ordinary promissory note, it would probably be generally understood to mean to sell or discount, and not to pledge it. Here it does not stand alone, and, looking at the words with which it is coupled, their Lordships are of opinion that it cannot have the effect which the appellant gives to it, and, for the same reason, "dispose of" cannot have that effect.

It did not appear when the indorsement by Thompson as Watson's attorney was made, but Nicholls & Co. did not deal with the note as having themselves become the holders of it by indorsement, as was the case in *The Bank of Bengal* v. *Macleod* (1). They borrowed the money on behalf of Watson, giving a promissory note for it signed by Thompson as his attorney, and pledged the Government promissory note as Watson's. As they had not authority to do this, the authority to sell not giving an authority to pledge, the appellant acquired no title to the note by its delivery to him, and the High Court has properly made a decree in the plaintiff's favour.

Their Lordships will humbly advise her Majesty to affirm that decree and to dismiss this appeal, and the costs of it will be paid by the appellant.

Solicitors—Watkins & Lattey, for appellant; Vallance & Vallance, for respondent.

1884. June 10. } *In re* BRANDON'S PATENT.

Patent—Prolongation—46 & 47 Vict. c. 57, ss. 25 and 113—Construction.

The enactments contained in section 25 of the 46 & 47 Vict. c. 57, do not affect a patent granted before the commencement of the Act, or any right or privilege which had accrued to a patentee before or at the commencement of the Act.

This was a petition, filed on the 23rd of May, 1884, praying for the prolongation of letters patent granted on the 31st of October, 1870.

Swinfen Eady, for the petitioner.
R. S. Wright, for the Crown.

LORD WATSON delivered the judgment of their Lordships (1):—

Their Lordships are of opinion that the first of these petitions is informal, and cannot be sustained, whether it be viewed as a petition presented under the Act of 1881, or under the previous statutes. But their Lordships have come to the conclusion that the petition presented upon the 23rd of May, 1884, ought to be received. It is obvious that the petition would not be competently presented if the enactments of section 25 of the last Patent Act applied. But their Lordships are of opinion that those enactments do not apply, and that the proceeding falls within the exceptions introduced by the 113th section of the statute of 1883. The provisions of sub-section A of that Act must be read distributively, and if so read they declare that the enactments of the new statute shall not affect any patent granted before the commencement of the Act, and they also declare in express terms that those enactments shall not affect any right or privilege which had accrued to the patentee before or at the commencement of this Act. Now the patent which was held by the present petitioner at the passing of this Act of 1883 was an exclusive right to use a certain invention for a definite period of time; but, as incidental to that right, he

(1) Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

In re Brandon's Patent.

had, by virtue of the provisions of the Act 5 & 6 Will. 4. c. 83, the further privilege of leave to apply for a prolongation of his patent, at any time before its expiration, upon such grounds as commended themselves to this Board. That right had accrued to him. He was in a position, if he had chosen, to make the application at the date when the new statute came into force; and their Lordships find it impossible, looking to the precise terms of section 113, to hold that that privilege, which was incident to and part of his patent right, was taken away by the provisions of the new Act; or, rather, they find it impossible to hold that it is not a right included in the express reservation made by section 113. They will therefore direct that the petition be received and the usual procedure followed.

Solicitors — S. R. Bastard, for petitioner; Solicitor to the Treasury, for the Crown.

1884. July 12. } THE QUEEN (*appellant*) *v.* DOUTRE (*respondent*).

Canada—Quebec—Counsel—Services of—Right to sue for—Petition of Right Act, 1876.

By the law of Quebec a member of the bar is entitled to sue for professional services:—Held, *that a member of the Quebec bar retained and performing professional services where the right to sue for such does not exist must be held to have been employed subject to the law of Quebec, and is therefore entitled to recover a quantum meruit in respect of such services, and from the Crown by petition of right.*

This was an appeal from a judgment of the Supreme Court of Canada dismissing an appeal from the Exchequer Court of Canada, and confirming a judgment of that Court which awarded to the respondent the sum of 8,000 dollars and interest, in addition to 8,000 dollars previously paid, for professional services in connection with the Fisheries Commission, under the Treaty of Washington, rendered to the Government of Canada by the respondent as a Queen's counsel.

The main point of law involved in the appeal was whether a member of the bar of the Province of Quebec, and one of her Majesty's counsel, can by petition of right recover from her Majesty, upon a *quantum meruit*, payment for services rendered by him as such counsel to her Majesty under the circumstances set forth in the evidence.

By article 22 of the treaty made in 1871 between her Majesty and the United States of America, provision was made for the appointment of commissioners to ascertain the amount of compensation to be paid by the Government of the United States to the Government of her Majesty in return for certain fishing privileges accorded by the treaty to the citizens of the United States.

By article 23 of the treaty it was provided that the commission should meet in the city of Halifax, Nova Scotia.

The respondent was retained by the Government of Canada to act as one of the counsel for the Crown before this commission, and he did act as such counsel.

The respondent was paid by the Government the sum of 8,000 dollars for his services and expenses; but being dissatisfied with that amount, he filed a petition of right in the Exchequer Court of Canada, pursuant to an Act of the Parliament of Canada called the Petition of Right Act, 1876, and claimed from the Crown the sum of 10,000 dollars for his services as such counsel, in addition to the 8,000 dollars already paid.

The Attorney-General of Canada, on behalf of her Majesty, filed a statement of defence, and denied the respondent's right to recover more than the amount already paid to him, and denied his right to proceed by petition of right for the recovery of fees as counsel.

The respondent filed his replication.

On the 8th of September, 1880, the case came on for trial before Mr. Justice Fournier in the Exchequer Court, and on the 12th of January, 1881, Mr. Justice Fournier gave judgment, declaring that the respondent was entitled to receive from the Crown the sum of 8,000 dollars and interest.

From this judgment the Attorney-

General of Canada, on behalf of her Majesty, appealed to the Supreme Court of Canada, and the appeal was argued before the full Court, and on the 13th of May, 1882, judgment was given.

The Court, consisting of six Judges, was equally divided, and the appeal was therefore dismissed with costs. The Chief Justice and Justices Strong and Gwynne were in favour of allowing the appeal, while Justices Fournier, Henry, and Taschereau thought it should be dismissed.

Chief Justice Ritchie held that the alleged agreement on which the petition was founded was made at Ottawa in Ontario for services to be performed in Nova Scotia, that therefore it was not subject to the law of Quebec; and that according to the law both of Ontario and Nova Scotia a barrister could not maintain an action for fees, and that therefore the petition did not lie, and the appeal should be allowed.

Mr. Justice Strong held that the terms of the alleged agreement shewed only an honorary undertaking on the part of the Crown, that no action could be brought on this, and that therefore Mr. Doutre was entitled to recover only his actual expenses.

Mr. Justice Gwynne held that by the law of Quebec counsel can recover for fees stipulated for by express agreement, that it was doubtful whether they could do so according to the law of Ontario, that the alleged agreement was governed by the law of Ontario; but that inasmuch as by the Petition of Right Act the subject is denied any remedy against the Crown in any case in which he would not have been entitled to such remedy in England under similar circumstances, and by the law in force in England before 23 & 24 Vict. c. 34. counsel could not in England have enforced payment of fees against the Crown, the petition did not lie.

Mr. Justice Fournier adhered to his opinion expressed in the Court below, which was to the effect that a counsel could sue for fees under an agreement according to the law both of Quebec and Ontario, and that the alleged agreement entitled him to a reasonable remuneration, which the learned Judge fixed at 8,000 dollars, with interest from the 29th of August, 1879, only. The learned Judge further held that the alleged agreement was made under the authority of the 25th article of the Treaty of Washington and of the Canadian Act 35 Vict. c. 2, which in the opinion of the learned Judge incorporated the Fishery Articles of that treaty, and the 25th article imposed on each of the high contracting parties the obligation to pay the counsel retained by them to prepare and support their case. The words of the 25th article of the treaty to which the learned Judge referred are as follows, that "each of the high contracting parties shall pay its own commissioner and agent or counsel. All other expenses shall be defrayed by the two Governments in equal moieties."

Mr. Justice Henry agreed in substance with Mr. Justice Fournier.

Mr. Justice Taschereau also agreed in substance with Mr. Justice Fournier, except that he held that the employment of the respondent was governed by the law of Quebec only.

From this judgment the present appeal was brought.

The Solicitor-General (*Sir F. Herschell*) and *Jeune*, for the appellant.—Neither by the law of Ontario nor by the law of Nova Scotia can a counsel maintain an action for his fees, or for remuneration for his services. By the law of Quebec a counsel cannot recover payment for his services upon a *quantum meruit*. Section 19 of the Petition of Right Act, 1876, provides that the law of England, prior to 23 & 24 Vict. c. 34 (Imperial), shall govern this case, and by such law a counsel cannot maintain any action.

They referred to *The Chartered Bank of India* v. *The Netherlands Navigation Company* (1), *Marcus* v. *The Crédit Lyonnais* (2), *McDougall* v. *Campbell* (3), *Beandry* v. *Ouimet* (4), and *Kennedy* v. *Broun* (5).

Doutre, Q.C. (Quebec Bar), and *Fullarton*, for the respondent.—The right of the respondent to sue is governed by the law

(1) 52 Law J. Rep. Q.B. 220; Law Rep. 10 Q.B. D. 521.
(2) Law Rep. 12 Q.B. D. 589.
(3) 41 U.C. C.B. 342.
(4) 9 L.C. Ju. 158.
(5) 13 Com. B. Rep. N.S. 677.

of Quebec, and the rules and practice of the legal profession in Quebec. Even if the respondent's rights are governed by the law and practice of Ontario, or Nova Scotia, or England, in every case the respondent is entitled to sue.

They referred to *Baldwin* v. *Montgomery* (6), *Jewry* v. *Busk* (7), *Mansfield* v. *Scott* (8), and *Bryant* v. *Flight* (9).

LORD WATSON delivered the judgment of their Lordships (10):—

On the 1st of October, 1875, the Government of Canada addressed and sent to the respondent, Joseph Doutre, a letter, signed by Mr. Bernard, the Deputy Minister of Justice, in the following terms:—

"Sir,—The Minister of Justice desires me to state that the Government being desirous to retain Counsel to act for them upon the proceedings in connection with the Fishery Commission to sit at Halifax under the Treaty of Washington, he will be glad to avail himself of your services as one of such Counsel, in conjunction with Messrs. Samuel R. Thomson, Q.C., and Robert L. Wetherbee, barrister, of Halifax. The Minister will be glad to know whether you are willing to act in that capacity, and in that case to place you in communication with the Department of Marine and Fisheries upon the subject."

Upon receipt of this letter, the respondent wrote, in reply, that he would act as requested.

The respondent is a member of the Quebec section of a body of legal practitioners incorporated by c. 72 of the Consolidated Statutes of Lower Canada, under the title of "The Bar of Lower Canada." By the terms of the statute each member of the bar is admitted to practise as "advocate, barrister, attorney, solicitor, and proctor at law"; and no person, except a member of the bar, duly admitted, is entitled to conduct business, in any of these capacities, before the Courts of Lower Canada. Every member of the bar must be registered in the district where he intends to practise; and he becomes answerable for his conduct to the council of that district, being liable, in case of his offending against professional rule or etiquette, to censure or to suspension from office for any period not exceeding a twelvemonth.

It is not matter of dispute that, according to the law of Quebec, a member of the bar is entitled, in the absence of special stipulation, to sue for and recover a *quantum meruit*, in respect of professional services rendered by him, and that he may lawfully contract for any rate of remuneration which is not *contra bonos mores*, or in violation of the rules of the bar. But it is asserted for the appellant that, by the law of Ontario, the province in which Ottawa, the seat of Government, is situated, a counsel cannot sue for his fees, and that he is under the same disability according to the law of Nova Scotia, where, according to article 23 of the treaty, the commission was to meet. In support of that contention, counsel for the appellant referred to the opinion of C. J. Harrison in *Macdougall* v. *Campbell* (3), as correctly expressing the law of Ontario; but they mainly relied upon the proposition that, in those provinces of the Dominion where the common law of England prevails, members of the Canadian bar can neither have action for their fees nor make a valid agreement as to their remuneration unless that right has been conferred upon them by statute. In these circumstances, it was maintained that the right of the respondent to sue for his fees must depend either upon the law of Ottawa, the *locus contractus*, or upon the law of Nova Scotia, the *locus solutionis*, and that in neither case was any suit competent to him.

Were it necessary to decide all the points thus taken by the appellant, questions of much nicety would arise. It is by no means clear either that Ottawa was the *locus contractus*, or that Nova Scotia was, in a strict sense, the *locus solutionis*. It is at least a plausible view of the case that the contract was completed in Quebec at the moment of time when the respondent posted his letter accepting the employment offered him by the Minister of Justice.

(6) 32 Law J. Rep. Q.B. 137; 1 U.C.C. Q.B. 284.
(7) 5 Taunt. 302.
(8) 1 Cl. & F. 314.
(9) 5 Mee. & W. 114; 8 Law J. Rep. Exch. 189.
(10) Lord Watson, Sir Barnes Peacock, Sir Robert Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

On the other hand, although the commission was to sit at Halifax, it is perfectly plain that the work expected of the respondent, and actually performed by him, was by no means confined to advocacy of the Dominion claims during the sitting of the commission. His employment was not limited to what would, in this country, be considered the proper duties of a counsel, but embraced the work of an agent or solicitor; in point of fact he was employed to prepare the case of the Dominion Government, as well as to plead in their behalf. That such was the understanding of both parties may be inferred from the known professional status of the respondent, as well as from the fact that, in pursuance of the so-called retainer of the 1st of October, 1875, the respondent had papers sent him, and was engaged at Quebec during eighteen months, with occasional visits to Ottawa, in collecting and putting in shape materials for framing and supporting the claim which was to be urged before the commission.

Then, as regards the other questions of law raised by the appellant, there is much difficulty. Their Lordships are willing to assume that the law of England, so far as it concerns the right of the bar of England to sue or make agreements for payment of their fees, was rightly applied in the case of *Kennedy* v. *Broun* (5); but they are not prepared to accept all the reasons which were assigned for that decision in the judgment of Chief Justice Erle. It appears to them that the decision may be supported by usage and the peculiar constitution of the English bar, without attempting to rest it upon general considerations of public policy. Even if these considerations were admitted, their Lordships entertain serious doubts whether, in an English colony where the common law of England is in force, they could have any application to the case of a lawyer who is not a mere advocate or pleader, and who combines in his own person the various functions which are exercised by legal practitioners of every class in England, all of whom, the bar alone excepted, can recover their fees by an action at law.

But it is unnecessary, in the view which their Lordships take of this case, to decide any of these questions which were raised by the argument for the appellant. The right of the respondent to sue for remuneration does not appear to them to depend either upon the law of the place where the employment was given, or upon the law of the locality within which it was to be performed. When an advocate or other skilled practitioner is, by law and the custom of his profession, entitled to claim and recover payment for his professional work, those who engage his services must, in the absence of any stipulation to the contrary, express or implied, be held to have employed him upon the usual terms according to which such services are rendered. That is the implied condition of every contract of employment which is silent as to remuneration; and it is a condition dependent upon the professional *status* and rights of the person employed, and not upon the law of the place where his services are to be given, so long as he is employed in his professional capacity. A member of the bar of England, in accordance with the law of that country and the rules of the profession to which he belongs, renders and professes to render services of a purely honorary character. If, in his professional capacity as an English barrister, he accepted a retainer to appear and plead before commissioners or arbitrators in a foreign country, by whose law counsel practising in its regular Courts were permitted to have suit for their fees, that would not give him a right of action for his *honoraria*. His client would have a conclusive defence to such an action, on the ground that he was employed as a member of the English bar, and, by necessary implication, upon the same terms as to remuneration upon which members of that bar are understood to practise.

The respondent is a member of the Quebec section of the bar of Lower Canada, and it was in that capacity that he was retained by the Government as one of their counsel before the Fisheries Commission. The respondent has the rank of Queen's Counsel conferred on him by patent; but that circumstance does not appear to their Lordships to affect the present case. It gave him a certain precedence in a question with other members of his bar, but it made no change upon

the duties and obligations incumbent on him as a practising member of the bar, or upon his privileges as such, including the right to sue for his fees. The retaining letter of the 1st of October, 1875, makes no mention of fees, and their Lordships are accordingly of opinion that it must be held to have been an implied condition of the employment thereby offered that the respondent was to be remunerated for his services upon the same terms on which these services were rendered to clients in Quebec. The respondent was engaged and undertook to go to Halifax as a Quebec counsel, subject to the same rules of his bar by which his conduct as a lawyer was regulated in Quebec; and it would be a strange result if, retaining his *status* and performing his work as a member of the Quebec bar, he was nevertheless to be stripped of the privileges attaching to that *status* as soon as he entered the Province of Nova Scotia.

A few weeks after the acceptance of the letter of the 1st of October, 1875, the respondent received a retaining fee of 1,000 dollars; and thereafter the subject of counsel's remuneration does not appear to have been considered until May, 1877, when it was discussed, at Ottawa, in the course of one or two personal interviews between Sir Albert Smith, Minister of Marine and Fisheries in the Government of Canada, and the respondent. The parties are widely at variance in regard to what actually passed on the occasion of these interviews. The allegation made by the respondent in his petition is,—

"That, on the eve of his leaving his home for Halifax, to wit, in May, 1877, your petitioner made with the Department of Marine and Fisheries a temporary and provisional arrangement, under which your petitioner should be paid one thousand dollars a month for current expenses while in Halifax, leaving the final settlement of fees and expenses to be arranged after the closing of the commission."

On the other hand, it is alleged in the defence filed for the appellant,—

"That the arrangement made with the supplicant, referred to in his petition, under which he was to be paid one thousand dollars a month while in Halifax, was not a temporary and provisional arrangement as alleged, but that the said one thousand dollars a month was, with other moneys previously paid to the supplicant, to be accepted by him in full for his services and expenses."

The commission met at Halifax on the 16th of June, and brought its labours to a close on the 23rd of November, 1877, having sat, with occasional adjournments, for a period of five months and seven days. In addition to the retaining fee already mentioned, the respondent received a refresher of 1,000 dollars, and also six monthly payments of 1,000 dollars each, during the sitting of the commission, making a sum total of 8,000 dollars. According to the respondent, these sums were paid to him on account of his remuneration, the precise amount of his fees and expenses being left for adjustment subsequently. According to the appellant, they were paid to and received by the respondent as in full of his whole claim for fees and expenses. Both parties are agreed that, in May, 1877, it was arranged that these sums (to the extent of 7,000 dollars) should be paid to the respondent; but they differ as to the footing upon which they were to be paid.

Being of opinion that, by the terms of his employment in 1875, the respondent was entitled to a *quantum meruit* in respect of the services which might be required of him, their Lordships think that it lies with the appellant to make out that the respondent's original right to remuneration was varied by subsequent agreement; and they have also come to the conclusion that the appellant has failed to establish the existence of such an agreement. The evidence upon this point, which need not be referred to in detail, is very unsatisfactory. It is abundantly plain that the impression honestly derived by Sir Albert Smith, from his interviews with the respondent in May, 1877, was, that the respondent had agreed to accept a refresher of 1,000 dollars, and a payment of the same amount monthly, during the sittings of the commission, as in full of all claims for remuneration. But in order to alter the then existing rights of the respondent, it is not enough for the appellant to shew that such was the impression created in the mind of Sir Albert

Smith; he must also prove that the terms of the arrangement as understood by Sir Albert Smith were understood in the same sense and were assented to by the respondent. But the respondent swears distinctly that he understood and believed the arrangement to be provisional merely; that its object was to fix the sums which were to be paid him on account, leaving the balance payable to him for after adjustment, and there are circumstances proved in the case which seem to establish beyond question that the respondent, at the time, sincerely entertained that belief. Then the evidence of Mr. Whitcher, the Commissioner of Fisheries for Canada, and the only third party present at these interviews, is not only very inconclusive, but what he does state, as to the language actually used by the principal parties to the arrangement then made, tends to support the respondent's understanding of its terms. In that state of the evidence, their Lordships are unable to hold that the appellant has satisfied the *onus* incumbent on him of proving the new arrangement alleged in his defence.

In the Courts below, whilst the learned Judges were equally divided as to the result of the case, there was a remarkable diversity of judicial opinion in regard to the law applicable to its decision. The cause was tried before Mr. Justice Fournier, who, on the 12th of January, 1881, gave judgment in favour of the respondent, and fixed the amount of fees and expenses still remaining due to him in remuneration of his services at 8,000 dollars; and it is not maintained that the amount awarded by the learned Judge is excessive, if the respondent has a right of action, and that right is not barred by the alleged arrangement of May, 1877. The cause was then taken, by appeal, before the Supreme Court of Canada, who gave their judgment upon the 13th of May, 1882. Chief Justice Ritchie and Justices Strong and Gwynne were in favour of allowing the appeal; but Mr. Justice Fournier, who was a member of the full Court, adhered to the view which he had taken as Judge of first instance, and Justices Henry and Taschereau, in substance, agreed with him. In consequence of this equal division of opinion in the Supreme Court, the order appealed from was confirmed, and the appeal dismissed with costs.

Their Lordships do not consider it necessary to notice the great variety of reasons assigned by the learned Judges of the Supreme Court in support of the views which were severally adopted by them, with the exception of one point raised in the judgment of Mr. Justice Gwynne. That point is deserving of notice, for this reason, that if the opinion of the learned Judge, which is based upon the provisions of the Petition of Right Act for Canada, be well founded, the respondent, though he might have suit for recovery of his fees from any subject, could not recover them, by petition, from the Crown. By a pardonable error, Mr. Justice Gwynne refers to the Act of 1875, instead of the Petition of Right Canada Act, 1876 (39 Vict. c. 27), which repealed the statute of the previous year. Section 19, sub-section 3, which is identical in expression with the similar section of the repealed Act, provides that:—

Section 19. "Nothing contained in this Act shall:—"

Sub-section 3, "Give to the subject any remedy against the Crown (*a*) in any case in which he would not have been entitled to such remedy in England, under similar circumstances, by the laws in force there prior to the passing of the Imperial Statute 23 & 24 Vict. c. 34."

The learned Judge seems to hold that these provisions place a Quebec lawyer on precisely the same footing as an English barrister, so far as regards his right to proceed against the Crown for recovery of his fees. But it appears to their Lordships that the process of reasoning by which the learned Judge arrives at that conclusion confounds two things which are essentially different, "right" and "remedy." The statute does not say that a Quebec lawyer shall, in all cases, have only the same right, against the Crown, as a member of the English bar. What it does enact is, that no subject in Canada shall be entitled to the "remedy" provided, unless he has a legal claim, such as could have been enforced by Petition of Right in England prior to the Imperial Act of the 23rd and 24th Victoria. It is impossible to hold that a member of the Quebec bar,

who, by law and practice, is permitted to sue for his fees, when he seeks his remedy against the Crown, under the Canadian Act of 1876, has no such legal claim, and that he sues under circumstances similar to those in which an English barrister is placed, who, neither by the usage of his profession, nor the law of his domicil, can maintain any action for his fees.

Their Lordships will, therefore, humbly advise her Majesty to affirm the judgment of the Courts below, and to dismiss the appeal, with costs.

Solicitors—Bompas, Bischoff & Dodgson, for appellant; Simpson, Hammond & Co., for respondent.

1884. July 25. } THE COMMISSIONER FOR RAILWAYS *v.* TOOHEY.

New South Wales—Commissioner for Railways—Tramways—Steam Motors—Power to use—Tramways Extension Act, 1880, 43 *Vict. No.* 25, *s.* 3—*Construction.*

The Commissioner for Railways in New South Wales has authority, by virtue of the provisions contained in section 3 *of the Tramways Extension Act,* 1880, *to use steam motors on tramways constructed under the* 42 *Vict. No.* 18.

Semble,—*That section* 5 *of the Act of* 1880 *authorises the use of steam motors on tramways constructed under that Act.*

This was an appeal from a judgment of the Supreme Court of New South Wales.

The action was brought by the respondent, as administratrix of her husband, one Michael Toohey, to recover damages from the appellant for negligence in managing a certain steam motor upon a certain public street, known as Elizabeth Street, in the city of Sydney, thereby causing the death of the said Michael Toohey.

The appellant pleaded not guilty, and the respondent took issue upon this plea.

The action was tried before one of the Judges of the Supreme Court and a jury, and a verdict was found for the appellant.

On the 14th of February, 1883, the respondent obtained a rule *nisi* for a new trial, on the grounds that the verdict was against evidence, and that the Judge should not have directed the jury that the appellant had a legal right to run the steam motors upon the tramway lines. This rule was on the 18th of May, 1883, made absolute.

From this judgment the appeal was brought.

Davey, Q.C., Rigby, Q.C., and *J. Denistoun Wood,* for the appellant.—The employment of steam as a motive power in the public streets of Sydney is expressly authorised by section 3 of the Tramways Extension Act, 1880.

Clarke, Q.C., and *Ellis,* for the respondent.—The use of steam motors upon tramways in and upon highways is illegal, unless sanctioned by express enactment. There is no legislative sanction for the use of steam motors.

SIR RICHARD COUCH delivered the judgment of their Lordships (1):—

This appeal is in a suit brought by the respondent, as administratrix of Michael Toohey, in the Supreme Court of New South Wales, against the appellant for negligence in driving and managing what is called in the declaration a tram motor, and a train of tram carriages attached thereto, upon and along a public street in the city of Sydney, called Elizabeth Street, and thereby causing the death of Michael Toohey. The defendant pleaded not guilty, upon which the plaintiff took issue. At the trial before Mr. Justice Faucett the jury found a verdict for the defendant. A rule for a new trial was moved for, on the grounds—first, that the verdict was against evidence and the weight of evidence; secondly, that Mr. Justice Faucett should not have directed the jury that the defendant had a legal right to run steam motors upon the tramway lines. There is no note in the record of the summing-up to the jury, but it seems to have been admitted that this direction was given. On the argument of the rule, a count was added to the declaration by leave of the Court, which stated that the defendant

(1) Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier, and Sir Richard Couch.

wrongfully drove and caused to be driven along a certain highway in the city of Sydney a certain dangerous machine, to wit, a certain steam motor or engine, and the said Michael Toohey, whilst lawfully using the said highway with his horse and cart, was struck and knocked down by the said steam-engine of the defendant being so driven as aforesaid, and his death was caused as stated in the first count. The Supreme Court, consisting of three Judges, after hearing counsel, ordered a new trial on both grounds.

The Commissioner for Railways has appealed to her Majesty in Council, on the grounds that the employment of steam as a motive power was not unlawful, and that on the question of negligence the weight of evidence was in his favour. As the former question was the first argued before their Lordships, they will dispose of it first.

The tramroad upon which the steam motor was being driven at the time of the accident was authorised to be constructed by an Act of the Legislature of New South Wales (42 Vict. No. 18), passed in 1879.

By the 3rd section of that Act, the Commissioner for Railways was charged with the construction and completion of this tramroad, and was to have all such powers and authorities created by the Act 22 Vict. No. 19, as were necessary for fully carrying into effect the purposes of the Act, and then followed a provision similar to that in the 5th section of the Act which follows.

By another Act passed in 1880 (43 Vict. No. 25), and called the "Tramways Extension Act, 1880," the Act of 1879 was repealed. And by the 2nd section it was enacted that tramways for conveying passengers and their luggage and other goods and merchandise should be constructed as soon as conveniently might be along the several routes set forth in the first and third schedules thereto, as well as along any other route or routes within the city of Sydney and the suburbs thereof which might be approved by the Governor with the advice of the Executive Council. The 5th section is as follows :—

"The Commissioner for Railways shall be charged with the construction, completion, and maintenance of all tramways constructed or maintained under this Act, and shall have power to enforce tolls or charges for the carriage of passengers, luggage, and goods by and along any such tramway; and shall have and may exercise all such powers and authorities created by the Act 22 Vict. No. 19, as are necessary for fully carrying into effect the purposes of this Act, and shall be subject to all the like rules, regulations, liabilities, and obligations in relation thereto as he is subject to in respect of railways by the said Act, so far as the same are applicable to such purposes; and, except as herein expressly enacted, all other the provisions of the said Act applicable to the construction, completion, maintenance, conduct, and working of, and to the imposing of tolls or charges for the conveyance of passengers, goods or chattels, and generally to the regulation of the lines of railway to be constructed thereunder, shall, so far as applicable as aforesaid, apply to the construction, completion, management, maintenance, conduct, working, imposition of charges for and regulation of the tramways to be constructed under this Act."

Although the words "maintained under this Act" occur in the early part of this section, the concluding words shew that it was intended to apply to the tramways described in the first and third schedules which were to be constructed under this Act. The construction of this 5th section is not free from difficulty. The words of the latter part, "so far as applicable as aforesaid," seem to refer to the previous words, "necessary for fully carrying into effect the purposes of this Act." And if it is considered, looking at the 2nd section, that the purposes of the Act were not merely the construction and maintenance of the tramway, but the conveying passengers and their luggage and other goods and merchandise, the latter part of the section may reasonably be construed as applying to the means of traction.

But the section which is applicable to the tramway in Elizabeth Street is the 3rd. That tramway is described in the second schedule, and the 3rd section enacts that the tramway described in the second schedule, and all buildings, offices, and works connected therewith constructed under the authority of the repealed Act, shall be maintained and worked by the

Commissioner under the authority of that Act, who for that purpose shall and may exercise all the powers and authorities and incur all the obligations respectively conferred and imposed upon him by that Act and the Act incorporated therewith with reference to tramways to be constructed thereunder. The Act incorporated by the 14th section is the 22 Vict. No. 19. Section 100 of that Act makes it lawful for the commissioner, under and subject to such orders, restrictions, and regulations as shall from time to time be made by the Governor, with the advice of the Executive Council, to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railways all such passengers and goods as shall be offered for that purpose, and to make such charges in respect thereof as may from time to time be determined upon by the Governor, with the advice of the Executive Council. And by section 141 the word "railway" shall be considered to extend to any tramway constructed or worked under the provisions of the Act. Their Lordships think there can be no doubt that by locomotive engines in this Act engines worked by steam power were intended; and with reference to their use on tramways it is not unimportant that section 115 gives to the commissioner, subject to the approval of the Governor and Executive Council, power to make regulations for, among other purposes, regulating the mode by which and the speed at which carriages using the railways are to be moved or propelled. In their Lordships' opinion, the provision in the 3rd section of the Tramways Extension Act, 1880, that for the purpose of working the tramway described in the second schedule the commissioner should and might exercise all the powers and authorities conferred upon him by the 22 Vict. No. 19, with reference to tramways to be constructed under it, made it lawful for him to use the steam motor upon the tramway in Elizabeth Street. In the order of the Supreme Court for the new trial the direction is stated generally "that the defendant had a legal right to run steam motors upon the tramway lines"; and it would seem from the reasons of the Judges that it was thought necessary to decide the question as to the tramways in the first and third schedules as well as the second. If, however, the direction is right as to the tramway in question in this action, the verdict cannot be set aside for misdirection. It is not necessary for their Lordships to come to any decision as to the use of steam motors upon the other tramways; but they may say that they think the 5th section, though the construction of it may not be free from doubt, is sufficient to make the use of them legal.

Although the use of the steam motor upon the tramway was lawful, the commissioner would be liable for an injury caused by the negligent use of it; and their Lordships agree with the Supreme Court in thinking that the verdict as to this was against the weight of the evidence.

There were for the plaintiff three witnesses who saw the accident, and had a full opportunity of observing what happened.

The deceased was in a cart laden with sewerage, sitting on the right-hand side of it. He had to cross Elizabeth Street, and, in consequence of the tramway being under repair and the street blocked, he had to go some twenty or thirty yards along the line. The motor was coming in the opposite direction, and the cart could have been seen by the man in it from some distance, and in time to have stopped before reaching the cart. He did not do so, but went on, and struck the cart, the deceased being thrown out. One of the witnesses, a policeman, who was walking in Elizabeth Street towards the cart, the motor being then behind him, said he heard Toohey and other men shouting to warn the motor, but it did not appear to pull up.

For the defendant were called the driver, conductor, and fireman of the motor. The first said Toohey's cart had got perfectly clear of the tramway, and was about two feet clear when they were within twelve or thirteen yards of him, and the cause of their striking him would be his pulling the off rein, or the horse shying, which is only conjecture. The cart being two feet clear of the tramway is not consistent with Toohey and the men shouting to give warning, and is opposed to

the evidence of the plaintiff's witnesses, who were better able to observe where it was. The conductor said he observed a slackening of speed, whilst the fireman said he did not observe any—he was too busily engaged. It is possible there was some slackening of speed just at the time of the accident, as they were only a few yards from the stopping place, but it was not in time or sufficient to prevent the striking of the cart. It was argued that the jury were warranted in believing the driver; but the weight of evidence was greatly in the plaintiff's favour, and there was no apparent reason for discrediting her witnesses.

The appellant has failed to shew that the order for a new trial ought to be reversed, and their Lordships will humbly advise her Majesty that it should be amended by omitting the second ground. The costs of the appeal will be paid by the appellant, as the order is fully supported by the first ground on which it was granted.

Solicitors — Mackrell & Co., for appellant; Donnithorne & Ewer, for respondent.

1884. June 13. } DYSON AND ANOTHER *v.* GODFRAY.

Jersey—Compensation or Set-off—Claim by way of—Admissibility of—Liquid demand.

By the law of Jersey a claim by way of compensation or set-off is admissible when it is for a demand which is termed "liquid."

This was an appeal from a judgment of the Royal Court of Jersey, condemning the appellant and ordering him to pay to one Thomas William Helliwell the sum of 495*l.* 10*s.* and expenses, and rejecting a cross-claim of the appellant.

The facts are stated in the judgment of their Lordships.

Forbes, Q.C., and *Cyril Dodd*, for the appellant.—The set-off or cross-claim was wrongly rejected, and should have been admitted.

They referred to *Terrien* (ed. 1578), b. 7, c. 6, *Contume de Paris*, art. 105, *Pothier, Obligations*, pt. iii. c. 4, *Dictionnaire de Droit Normand* (ed. 1780), p. 314, *Le Geyt, Laws of Jersey* (ed. 1847), vol. ii. p. 412, *Basnage*, p. 89, and to *La Cloche* v. *La Cloche* (1).

Wills, Q.C., *Wills* and *Ogle*, for the respondents.—By the law of Jersey no claim can be set up by way of set-off.

They referred to *Bouteiller on Customary Law*, 1479 (ed. 1653), 4 *Co. Inst.* c. 70, *Toullier*, vol. vii. p. 428, *Charondas Le Caron*, pp. 154, 323.

Sir Robert P. Collier delivered the judgment of their Lordships (2):—

The circumstances under which this case arises may be shortly stated thus: On the 18th of September, 1880, Mr. Dyson, the defendant, entered into a contract with Mr. Godfray, Greffier of the States of Jersey, on behalf of the States Market Committee, for the purpose of executing and completing all the "iron founders', painters', and glaziers' patent work mentioned in certain specifications and general conditions," and so on. There follow various provisions usual in contracts of this kind; among others, that the payments shall be made according to the certificate of the architect, and that extras are to be allowed and deductions are to be made only according to his certificate, and that part payment is to be made in the first place of seventy-five per cent., and subsequently of what remains. It concludes in these terms:—"And it is hereby further agreed that seven days will be allowed from the date hereof in order that the contractor may examine the plans and specifications, to test the accuracy of the list of quantities; and any errors discovered therein, and communicated in writing to the architect within that time, will be rectified, and be added to or deducted from the amount of the contract price, as the case may be, but no additions or deductions will be made in respect of

(1) 39 Law J. Rep. P.C. 25; Law Rep. 3 P.C. 125.

(2) Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier, and Sir Richard Couch.

such errors after the expiration of the said seven days; such additions or deductions to be made by the architect, whose decisions shall be final." It appears that, some time before this, what may be called a bill of quantities was delivered to Mr. Dyson, and the only material items in it are "1,500 feet of Helliwell's patent glazing round base of tower," and "21,200 feet superficial Helliwell's patent glazing to main roof and of roof of tower." Mr. Dyson put his price on those quantities, 187*l.* 10*s.* and 1,855*l.*, and he made his tender upon that footing, which tender was accepted, and led to the contract which has been first referred to. Fourteen days were given for the discovery and rectification of errors.

The next transaction which it is necessary to refer to is a sub-contract entered into between Mr. Dyson and Mr. Helliwell, the architect, who had a patent in respect of glazing work, on the 20th of August, 1881, which is in these terms:—"In consideration of your executing the roof glazed work, &c., as stated in my contract for these works, and at the sums named in my contract, I agree to pay to you the sums named in such contract, and amounting to 2,042*l.* 10*s.*, immediately after I have received it from the Markets Committee, or such sums as I may receive from them." On the 17th of November, 1882, which is the next date of importance to be found in this very meagre record, a certificate is given to this effect:—"New Markets, St. Heliers, Jersey, Mr. J. Dyson's account. Amount of contract, including glazing roofs and painting, 4,229*l.*; extras on deductions, 9*l.* 13*s.* 3*d.*," making 4,238*l.* 13*s.* 3*d.* "Cash on account," 3,250*l.*; deductions for less value in gates, 20*l.*—making 3,270*l.*, leaving a balance of 968*l.* 13*s.* 3*d.* due. On the 6th of December of that year an order was made, in accordance with this certificate, upon the treasurer to pay this money within ten days from that date to Dyson, being, as it is stated, the balance remaining due to him upon the contract; and it will be observed that under this certificate the whole excess of the extras over deductions was 9*l.* 13*s.* 3*d.* The plaintiff attached this sum in the hands of the treasurer for a debt which he alleged to be due to him; claiming 495*l.* 10*s.*, being the balance of the sum of 2,042*l.* 10*s.* which he was to be paid under his contract, and brought this suit to recover it. Thereupon the defendant obtained its release upon giving security. He states in his case that he received 4,218*l.* 19*s.* 1½*d.*, which is the very sum he is entitled to under the certificate of the 17th of November, 1882.

Mr. Dyson defends himself against this action on two grounds. Firstly, that in the bill of quantities, which has been before referred to, there was a material mistake—an over-statement of the quantities which would amount according to the prices given to a sum of 301*l.* 4*s.* 7½*d.*, and he says that, instead of being indebted to Helliwell in 495*l.* 10*s.*, he is only indebted to him in 194*l.* 5*s.* 4½*d.* He contends that he is liable to pay Helliwell, not a lump sum for the whole of the work executed, but at the rate of so much per foot; and, consequently, that he is entitled to a deduction for each foot less than the number specified. It is to be observed that, although he has fourteen days according to the bill of quantities, and seven days further according to the contract, to point out any errors in the quantities, he discovers no errors until two or three days after the certificate of November, 1882, when he employs another architect to make the measurements, whose measurements differ from the measurements of Mr. Helliwell. Their Lordships do not find in the record any such allegation as was made in the case presented to them on the part of the appellant, of fraud on the part of Helliwell, nor is there any direct allegation even of mistake; but, be that as it may, they are of opinion that the Court were substantially right in the view which they appear to have taken—namely, that the plaintiff accepting the sum of 968*l.* as the balance of his account, that sum was applicable to the sub-contract with Helliwell, to whom he was bound to pay the sum due under it, and that, if there was a mistake, it was for the Market Committee in Jersey to avail themselves of it, if they thought fit or were able so to do. Mr. Dyson repudiates no portion of the sum as not due under the contract, but lays claim to the whole of it under pretence of a charge for extras,

for which there is no foundation, inasmuch as the only extras certified for and recoverable amount to 9*l.* 13*s.* 3*d.*

These being the facts of the case, it appears to their Lordships that the Court were right in holding that the defendant could not contest the claim of Helliwell to the balance of 495*l.*

But another question of more difficulty arises. The defendant claims what we should call a set-off, but which perhaps is more properly called, according to the civil law, a claim for compensation, and he puts it in this way:—"En effet, le dit Sieur Dyson a fait au dit Sieur Helliwell des fournitures pour la reconstruction du marché à lard pour une somme liquide et admise au montant;" the whole sum amounts to 368*l.* 18*s.* 7*d.* As far as their Lordships are able to see from this record, the Courts of Jersey have taken no notice whatever of this demand beyond dismissing it. They do not appear to have applied their minds to it in the slightest degree in order to ascertain whether the claim was liquid or illiquid, or whether it was true or false.

It has been argued on the part of the plaintiff that according to the law of Jersey no claim whatever for compensation is admissible; and it was said that such had been once the law of Normandy. Undoubtedly the law of Jersey was founded originally upon the law of Normandy, and such may have been the law of Normandy 600 or 700 years ago; but their Lordships think it is unnecessary to go back to so ancient a date. On referring to *Basnage*, a book frequently quoted in Jersey as an authority (as appears from the report of the Commissioners), it is said that, although originally what are called letters from the Chancellerie were necessary in order to enable a defendant to set up a claim by way of compensation, yet that in his time this claim could be made "*ipso jure*, nonobstant le transport et au préjudice du créancier arrêtant, avant la déclaration de compenser." This view is confirmed by *Terrien*, who has been referred to in more than one case before this Board as some authority with respect to Normandy and Jersey law; and it is also in accordance with the book upon Jersey law by Le Geyt, which, as far as their Lordships are aware, is the most authoritative work on Jersey law, published comparatively recently as a compilation of all the law relating to the administration of justice in the island, but written some hundred years ago. According to these authorities, a claim by way of compensation is admissible when it is for a demand which is termed liquid. Perhaps the best definition of what may be called a liquid demand is found in *Pothier, Obligations*, 1st vol., part 3, chapter 4, paragraph 628: "Il faut 3° que la dette qu'on oppose en compensation soit liquide. Une dette est liquide lorsqu'il est constant qu'il est dû, et combien il est dû, *cùm certum est an et quantum debeatur.* Une dette contestée n'est donc pas liquide, et ne peut être opposée en compensation, à moins que celui qui l'oppose, n'en ait la preuve à la main, et ne soit en état de la justifier promptement et sommairement." The Courts of Jersey ought to have ascertained whether this was a liquid demand in that sense. If they had found that it was a demand made for the purpose of delaying payment of the sum sought in the action, that would be a good ground for dismissing it. On the other hand, if they thought that the objections to it were frivolous, that would be a ground for dismissing the objections. Again, if they came to the conclusion that, instead of being an admitted debt, or a debt capable of being readily proved, it raised a question which would give rise to serious litigation, it would not properly come under the head of a liquid demand. But all these questions must be considered by the Court; and inasmuch as they have not applied their minds to them, their Lordships think that the case should go back to the Royal Court of Jersey for the purpose of dealing with this set-off in the manner which has been indicated. Under these circumstances their Lordships will humbly advise her Majesty that it ought to be declared that James Dyson is justly indebted to Thomas William Helliwell in the sum of 495*l.* 10*s.* sued for, but that the Decree or Order of the Royal Court of Jersey, of the 23rd of May, 1883, appealed from, ought to be reversed to the extent of 369*l.* 8*s.* 7*d.* of the said principal sum of 495*l.* 10*s.*, and

that the said Decree or Order ought to be reversed in so far as it rejects the plea of compensation set up by the appellant; and that the cause ought to be remitted to the Royal Court of Jersey to consider and determine whether the appellant's counterclaims to the amount of 369*l.* 8*s.* 7*d.* are in whole or in part liquid debts, or debts "incontestées ou du moins incontestables," as alleged by the appellants, and to proceed further in the cause, as may seem just. There will be no costs of this appeal.

Solicitors—Williamson, Hill & Co., for appellants; Van Sandau, Cumming & Armitage, for respondent.

1884. June 25. THE NATAL BANK (*appellant*) v. EMMA BOND (*respondent*).

Natal—Surety—Liability of Women—Senatus Consultum Velleianum—De authentica—Si qua mulier.

By the law of Natal a woman is not bound as surety, even when she executes a deed as surety, unless she expressly renounces the benefit of the senatus consultum Velleianum and the rule de authentica; nor can a husband holding a general power of attorney to execute securities of what nature or kind soever in behalf of his wife, renounce on her behalf those benefits, unless authority so to do is expressly contained in the power.

This was an appeal from an order of the Supreme Court of Natal.

The appellant was the manager of the Natal Bank, and he sued to recover on behalf of the bank a sum of 1,500*l.*, secured to the bank by the bond of the respondent, dated the 13th of October, 1882. The respondent was married in Natal, in September, 1852, having before marriage entered into a contract which provided that there was to be no community of property, that each spouse should retain his or her property, and should not be answerable for the debts and engagements of the other.

In 1874, Emma Bond granted to her husband Thomas a general power of attorney, and Thomas Bond administered his wife's estate and affairs under this power.

By this power Thomas Bond was granted full and complete authority to manage his wife's property and affairs, of whatsoever kind, as he should think proper, to bring and defend suits on her behalf, to enter into contracts on her behalf, to buy and alienate property on her behalf, to make and grant all such mortgage bonds or other securities as might be requisite or necessary under obligation of her person and property of every description, and in her name to enter into securities of what nature or kind soever, and to enter into and make such deeds and instruments as might be necessary or most to her advantage, and also the right to delegate his authority.

In October, 1882, Thomas Bond, by a power of attorney, delegated to one Granger power to enter into a mortgage bond acknowledging Emma Bond's indebtedness to the Natal Bank in the sum of 1,500*l.* as a continuing security for the due payment of certain promissory notes and bills of exchange, and to renounce therein the legal exception *non causa debiti* and all others applicable, and further to hypothecate certain land as security for such sum, and generally to do all things in the aforesaid behalf.

The said Granger entered into a mortgage bond, dated the 13th of October, 1882, which effected the purposes indicated, and renounced the legal exceptions *non numeratæ pecuniæ, non causa debiti*, and, if need be, the benefit of Emma Bond's ante-nuptial contract and the *beneficia senatus consulti Velleiani—de authentica si qua mulier—ordinis seu excussionis et novæ constitutionis—de duobus vel pluribus reis debendi.*

The defence to the action was that Thomas Bond had no authority to renounce the exception *de authentica*, and judgment of absolution from the instance with costs was given. From this judgment this appeal was brought.

Matthews, Q.C., R.S. Wright, and *Danckwerts*, for the appellant.—It was competent

to the respondent Thomas Bond and his delegate to renounce the benefit of the *senatus consultum Velleianum* and the said other exceptions. Under the circumstances of the case it was within the capacity of Emma Bond to enter into a contract such as that of the 13th of October, 1882. It is inequitable that the respondent Emma Bond should be permitted to set up the *exceptio senatus consulti Velleiani* or any other exception. They referred to *Voet*, *b* 16 to 1, *Grotius' Introduction to Jurisprudence*, b. 1, c. 5, *Van der Keessel's Theses*, art. 92, *Chaplin on Trustees*, ed. 1859, p. 157, *Van Leeuwen Censura Forensis*, b. 1, c. 12, s. 10, *Steyn* v. *Steyn* (1).

Jeune and *Laughton* (Natal Bar) were not heard.

LORD WATSON delivered the judgment of their Lordships (2):—

This appeal is taken in an action brought at the instance of the appellant, in his capacity of acting general manager of the Natal Bank, for the purpose of enforcing the rights of the bank under a mortgage bond granted upon the 13th of October, 1882. By that bond one Granger professed, as attorney for the respondent Mrs. Bond, to bind her personally as a surety to the bank for the floating balance that might be due by a firm of Johnstone & Co., at any time, to the extent of 1,500*l.*, and also to mortgage to the bank a property in Church Street, Pietermaritzburg, in further security. By the law which prevails in Natal a lady cannot be effectually bound as a surety, even where she executes the deed by her own hand, unless she specially renounces the benefits of the *senatus consultum Velleianum*, and also the benefits of another rule, *de authentica*. The effect of these privileges is to render her deed altogether void, unless she has expressly renounced her right to plead them. Mr. Granger has renounced that right on her behalf. He was merely a sub-attorney, authorised specially to that effect by Mr. Bond, the respondent's husband, who held a general power of attorney from the respondent, dated the 20th of November, 1874. If that power of attorney gives Mr. Bond authority to make such a renunciation on behalf of his wife, then these legal privileges were well renounced by his attorney Mr. Granger, because the general deed of November, 1874, gives him authority to delegate. We must, therefore, look to the bond of the 20th of November, 1874, for the purpose of ascertaining whether the respondent had any power to impose an obligation of suretyship upon his wife, and also to renounce the protection which the law gave her against the consequences of entering into such an obligation. It appears to their Lordships to be doubtful whether the power of attorney gives Mr. Bond any power to bind his wife as a surety. It may be plausibly argued that the words "securities, of what nature or kind soever," from their position in the context, can only be held to mean securities for money taken or money given; and the general words that follow—"to perform all such acts and things," and so forth—which were strongly founded upon by the counsel for the appellant, may very naturally be read as powers to perform such acts as are necessary or for the advantage of the wife in relation to the management of her estate. But it is not necessary to determine the precise limits of the power of attorney in that direction, because their Lordships are of opinion that there is no power given by this deed to dispense, on behalf of the lady, with the protection which the law affords her in case of a deed being executed by her, or for her, binding her as a surety. There are no express words in this power of attorney giving her husband such authority, nor do there appear to their Lordships to be any words from which it can be fairly implied that the lady had in view the renunciation of her legal privileges, or that she intended to confer any authority to renounce them on her behalf.

These observations dispose of the whole case that is before the Board. But it is necessary to advert to one or two other points which have been raised at the bar, not for the purpose of deciding them, but for the purpose of shewing that they do not arise, and cannot be decided, in this appeal.

(1) Buchanan, 1873, p, 105.

(2) Lord Watson, Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, and Sir Arthur Hobhouse.

First of all it is maintained that, by the law of Natal, Mr. Bond had, by virtue of his *jus mariti* and right of administration, one or other, or both, power to dispose of all property belonging to this lady which was not expressly reserved as her separate estate, after marriage. And it was contended that there was evidence, or at least that it might fairly be inferred as a matter of fact, that the property in question, which was mortgaged by the deed of the 13th of October, 1882, was really property the administration and power of disposal of which rested entirely with the husband. But the mortgage-deed, which embodies the transaction between the parties, proceeds on the plain footing that the property thereby given over as security was the separate estate of the lady, and that the husband had only authority to dispose of it—indeed, he professes that he has no other authority—by virtue of the power of attorney which he had got from his wife in the year 1874. It would be a very strong thing in the face of that profession, upon which the mortgage transaction proceeds, to infer from some mere scintilla of evidence—for there is nothing more in this case—that this property stood in such a position that by law Mr. Bond had the sole power of alienation. The authorities that were cited at the bar may or may not be well decided in the circumstances to which they apply. Upon that point it is unnecessary to offer any opinion. It is sufficient to say that there are no facts proved or pleas stated in this case which can raise any question in which they would be available as precedents. The declaration is laid wholly on the bond. It is framed upon the footing that the husband had power to dispose of his wife's property because he was her attorney. There is an attempt, no doubt, to validate his exercise of the power by alleging that the lady had an interest in the firm to cover whose debit balances in account with the bank the security was given; but that is not proved to have been the fact.

Then another point was taken, the third plea in the replication being an averment to the effect that at the time of the marriage the value of her estate was very small, and that the property in question, the mortgaged property, had been entirely acquired by the husband's trading, and had been under his uncontrolled administration. It is possible that if those facts had been made out some of the authorities we were referred to might apply. It might be that these facts, if established, would give the husband full authority to alienate the property. But not one word of that allegation had been established by proof. Therefore the only point really raised by the pleadings and by the evidence being whether or not Mr. Bond had, under the power of attorney, authority to renounce these legal exceptions on the part of his wife, their Lordships have no hesitation in coming to the conclusion that the judgment of the Court below is well founded. They will, therefore, humbly advise her Majesty to affirm the judgment of the Court below, and to dismiss the appeal with costs.

Solicitors—Travers, Smith & Braithwaite, for appellant; Johnston, Harrison & Powell, for respondents.

1884. July 12. DAVID CLARK (*appellant*) *v.* JOHN CLARK AND OTHERS (*respondents*).

Victoria — Trustee — Executor — Purchase by—Avoidance of Sale.

A sale cannot be avoided merely because the purchaser might, at his option, have acted as trustee of the property purchased. D. was nominated, with another, executor of his father's will. D. did not prove the will, or act as executor, and he became the purchaser of part of his father's estate:— Held, *that the sale could not be set aside, unless it were shewn that D. used his power to obtain an unfair advantage.*

This was an appeal from a judgment of the Supreme Court of Victoria, whereby a judgment of Mr. Justice Molesworth, dismissing the bill of complaint of the respondents, was reversed, and a decree made in accordance with the prayer of the bill.

The bill sought to set aside an agree-

ment for the purchase by the appellant of the interest of the estate of John Clark, deceased, who was the father of the appellant and of the respondents John Guillan Clark and Jane Lawrence, in certain property and in the business of a tanner.

The facts are stated in their Lordships' judgment.

Macnaghten, *Q.C.*, and *Gardner*, for the respondents.—The sale was a breach of trust by the executors, of which the appellant had notice. The agreement for sale was entered into before the appellant had renounced probate. The sale effected in pursuance of such agreement is void. At the date of the agreement the appellant was clothed with a fiduciary character.

Davey, *Q.C.*, and *Dennistoun Wood*, for the appellant.—The appellant did not prove the testator's will, or act in the administration of his father's estate. He was not in a fiduciary position towards the residuary legatees, so as to render him incapable of purchasing the property. The appellant acted *bona fide*, and the respondents' interests were protected by the acting executor. The appellant was entitled to purchase the property in question.

Sir Arthur Hobhouse delivered the judgment of their Lordships (1):—

In this case a bill was filed on the 15th of August, 1881, to set aside a transaction which was entered into in the month of April, 1866. The plaintiffs, the now respondents, are the two youngest children of John Clark—namely, John Guillan Clark, who attained twenty-one in October, 1869, and Jane, the wife of William Lawrence, who attained twenty-one in January, 1867. Mrs. Lawrence sues by her next friend George Clark Allan, and her husband is a defendant. The principal defendant, the now appellant, is David Clark, the eldest son of John Clark.

In 1864, John Clark had for some time been carrying on a tannery business near Melbourne. In July, 1864, he took his two sons, David and George, into partnership; and in January, 1866, on the sudden and simultaneous death of John and George, David became surviving partner. The impeached transaction is the purchase of the partnership assets and of the site of the business by David.

The partnership was regulated by a deed made in April, 1865, of which the now material provisions were that the business should be carried on upon certain land belonging to John Clark; that so long as it was so carried on he should be entitled, in addition to his share in the profits, to receive out of the funds of the partnership by way of rent the sum of 150*l.* a year; that John's stock-in-trade should be taken by the partnership at the price of 5,300*l.*, which should be considered as a loan and a first charge upon the partnership assets; that he should be entitled to receive out of the funds of the partnership, in addition to his share of the profits, interest at seven per cent. on that sum, and that the net profits should be divided in the proportions of one half to David, and one fourth to each of the others.

By his will John Clark appointed David and a Mr. Balderson his executors and trustees, and the guardians of his infant children, and he gave directions for the conversion of his real and personal estate and its equal division amongst his children. The surviving children were five in number, the three parties to this appeal, Ann Clark, and Agnes the wife of G. L. Allan.

When the news of John and George's deaths arrived, which happened on the 16th of March, 1866, David had to consider his position; and he was advised by counsel on the 11th of April, 1866, to the effect that if he wished to continue the business he had better not prove the will, that it would not be judicious for him to continue the business for the benefit of himself and the family, and that arrangements should at once be made for winding up the business. Counsel then suggested that David might make a fair arrangement with the representatives of John and George for the purchase of their shares, but that in such case it was essential that he himself should not be one of those representatives.

In point of fact David never did prove his father's will. On the 1st of May, 1866, he renounced by deed the office of trustee and executor and all trusts, powers, and

(1) Lord Watson, Sir Barnes Peacock, Sir Robert P. Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

authorities whatsoever by the will expressed to be made or given to himself and Balderson. There is no allegation in the bill, and no suggestion in the evidence, that he ever acted as executor or guardian, or was looked upon by the others of the family as filling either of those characters.

On the 17th of May, 1866, Balderson alone proved John Clark's will. In August Ann Clark took out administration to George. On the 15th of October Balderson and Ann executed a deed whereby they agreed to sell to David their interest in the partnership assets and the land whereon the business was conducted for the sum of 5,000*l.* By the same instrument David gave security for payment of the purchase-money with interest to Balderson by ten instalments, the last of which fell due on the 4th of May, 1871. The stipulated payments were duly made by David to Balderson, and accounted for by Balderson to the beneficiaries.

This is the transaction which the respondents have impeached, and which has been set aside by the decree of the Supreme Court now appealed from. It is impeached by the bill on the one ground of fraud and misrepresentation on the part of David, but that ground is not the only one on which the Court has rested its judgment.

There are passages in this judgment from which it appears that the Court considered that, at least until his final renunciation, David must be treated as being an executor, and that he was also guardian to the respondents. And it has also been contended that the sale may be considered as one by an executor to himself, and as proceeding upon misrepresentation made by David the surviving partner to David the guardian of the infant legatees. If that were so, of course it could not stand when duly challenged by the beneficiaries. But David never was a guardian at all. And their Lordships cannot agree that a sale is to be avoided, merely because when entered upon the purchaser may at his option become the trustee of the property purchased, though in point of fact he never does become such. A man so placed might possibly use his power in such a way as to raise a case for setting aside the transaction, and whether David so acted is one of the questions to be decided. But that is a different thing altogether from the absolute disability attaching to one who would at the same moment be a vendor in trust for others and a purchaser on his own behalf. No such case as that existed, nor was any such charged by the bill.

The case made by the bill is to the following effect: That at a family meeting held soon after the news of John Clark's death had arrived, David stated that John Clark's entire estate was not worth more than 5,000*l.*, and offered to give the four others of the family 1,000*l.* each for the purchase of the whole estate, excepting a saddlery business; that, relying on the good faith of David, believing his statement as to value, being in great distress of mind, and anxious to avoid a family quarrel which David threatened to force on, Jane, who was then twenty years old, and Ann and Agnes who were adult, assented to David's proposal, and that John, who was only seventeen years of age, was not consulted; that the three sisters expressed their desire to have independent legal advice, but did not persist in their wish because David expressed great indignation thereat as an impeachment of his good faith; that David never stated his intention of disclaiming the trusts till he had procured the assent of his sisters to his proposal, but executed the deed of disclaimer immediately afterwards; that on the 15th of October, 1866, an agreement was executed by Balderson of the first part, Ann Clark (who had become the legal personal representative of George) of the second part, and David of the third part, by virtue of which David claimed to have become absolutely entitled to the tannery and the land on which it stood, but that the plaintiffs were ignorant of its purport or effect; that though David's three sisters and brother knew as a matter of repute that a partnership existed between John, David, and George, they were in entire ignorance of its terms, and it was not until the month of April, 1881, or thereabouts, that by the accidental discovery of the indenture of partnership they for the first time learned how greatly they had been deceived by David in respect of the value of John's estate; that Ann Clark had discovered the deed in a box in her possession; and that the value of the

land on which the tannery was conducted was 3,700*l.* at John Clark's death, whereas it was valued to David at 2,000*l.* The bill also complained of the sale to David of another piece of John's land at an undervalue, but that part of the case has been given up. Beyond the foregoing statements nothing was alleged to shew the fraud and misrepresentation of David, which was the sole equity of the bill.

It will be seen then that the case made by the bill rests upon David's statement as to the value of the estate, the belief of the others in that statement, his threatening to quarrel with them, his deterring them from taking legal advice, his reserve to them about disclaiming the trusts, their ignorance of the partnership deed, and the undervalue of the land. There is no charge that the partnership assets had in fact been undervalued, nor that David knew or believed their value to be more than he stated. On that point the plaintiffs only adduce the value given in the partnership deed. They do not allege that David concealed the deed. They do not suggest that there was any collusion between him and Balderson, or that Balderson was in any respect incompetent or neglectful of his duty. Balderson died in 1875, and his executor is a party to the suit, but no relief is prayed against him except the formal prayer for the administration of John Clark's estate.

If then the case had been proved exactly according to the facts stated in the bill, it is at least doubtful whether the charges of fraud and misrepresentation against David could be sustained. But the case proved is a very different one.

It appears that Balderson was an experienced man of business employed by John Clark, and much trusted by him and all his family. Allan, the husband of John Clark's daughter Agnes, is described by the plaintiff Jane as a first-class man of business and an honourable man. She adds that she and her sister Ann were on very good terms with him, saw him and his wife frequently, and consulted him as to John Clark's affairs. His relations with David appear to have been rather unfriendly. It may be added that Ann and Jane lived in the house where both the tannery and the saddlery businesses were carried on.

Such being the position of the family, the proposal that David should purchase the partnership business proceeded from Balderson. On what day this proposal was made does not appear. Indeed, the evidence is not clear as to the dates of the various steps in the negotiations, but they began some time before the 15th of April, and the terms were accepted before David's renunciation on the 1st of May.

On Balderson's proposal much bargaining took place between him and David as to price. Balderson employed one Dixon, who acted as a clerk in the tannery business, to make a valuation of the assets, which Dixon stated at 5,240*l.*, and he took other steps to satisfy himself of their amount and value. As early as the 17th of April he consulted his solicitor, Mr. Sedgefield, who continued to act for him until the completion of the sale. David consulted other advisers, first a Mr. Hanwell, whom he calls a law clerk, and afterwards Messrs. Bennett & Taylor, who took the opinion of counsel, which has been stated. Allan went to the tannery more than once to see things for himself. He denies this, but it is proved by other witnesses. He also consulted a solicitor, one Mr. Crisp, who, on the 24th of April, had an interview with Mr. Sedgefield, and fully discussed the matter. Allan now says Mr. Crisp acted only as a friend; but he was paid by Allan for his services, and was treated by Sedgefield as a solicitor.

After carefully considering the state of the business, David made up his mind that 5,000*l.* was a full price to pay to his father's estate, and on that basis he offered to pay 1,000*l.* each to the other four children. Balderson tried to get better terms, and so did some of the family. Jane says they claimed 1,600*l.* each. Allan says that putting together John Clark's claim for the value of the original stock, which was fixed by the partnership deed at 5,300*l.*, and the sum of 2,500*l.*, at which John Clark's will valued the land, he thought his wife should get 1,500*l.*, and held out for that sum for a considerable time. But David declared that his father had placed an extravagant value on the

land, and that the partnership had counter-claims against the 5,300*l.*; and that his offer based on the value of 5,000*l.* must be taken as final. Balderson then had to consider the alternative of accepting David's offer, or winding up the business and carrying it into the market. Trade was very dull. Other tanneries were in the market. Balderson appears to have been afraid that the property would sell for very little, and moreover that, if David did not buy, the estate would get involved in litigation, and, as he expressed himself to Allan, the property would be frittered away and the girls would get nothing.

In these circumstances Balderson became very anxious that David's offer should be accepted. But he would not take the responsibility of doing so on himself. If the adult members of the family agreed, he would prove the will and conclude the bargain. If they were adverse, he openly told them he would not involve himself in a family quarrel, but would renounce probate. David was equally open. If his offer was accepted he would renounce probate, as indeed he was advised that he must do; if not, he would act as executor, or at all events would hold himself open so to act.

There was more than one family meeting held to discuss these matters, and at the last of these meetings, which probably took place on the 23rd of April, the affair was brought to a head. It is clear that the family acted under Balderson's advice. Jane says, "Balderson advised us to accept the offer, because he believed, as David said, that it would realise no more." Ann says, "Balderson told me it was advisable to accept 1,000*l.*, as he thought it was not a saleable business." And again, "I took the 1,000*l.* because Balderson advised, and David said we could get no more." And Allan says, "Balderson assured me that he believed the offer was full value. It was not at once accepted. I, for my wife, accepted 27th or 28th of April. Balderson was constantly seeing me about it in the interval." There is no trace in the evidence of that reliance on David's assurances upon which the equity of the bill is built.

The view taken of the transaction by their Lordships is this. It was one quite within the competence of Balderson as executor. It is not the less so because Balderson declined to clothe himself with the character of executor unless and until he could see a good chance of avoiding family quarrels and litigation. He need not have consulted the family, but as a prudent man he did so. David was not in any position of advantage except as surviving partner, which may have thrown upon him the obligation of giving full information. That Balderson, and Allan too, had free access to all available means of information is clear. It is equally clear that they were well advised, understood the bearings of the question, and struggled to enhance the price beyond what David would give. Nor can their Lordships find any trace of dishonesty or concealment on David's part from first to last.

The cause was heard before Mr. Justice Molesworth, who dismissed the bill without costs, except as against Balderson's executor, whose costs the plaintiffs were ordered to pay. It would seem that the prayer for the administration of John Clark's estate was treated as only incidental to the recovery of assets for that estate by setting aside the sale to David.

The plaintiffs then appealed to the full Court, who set aside the sale as against them, directed accounts and administration of the partnership estate and of the estates of John and George Clark, and ordered David to pay all the costs both of the original hearing and of the appeal.

One of their reasons for making such a decree has been already disposed of. Having stated what is the case made and the case proved, their Lordships will advert briefly to the other reasons of the Supreme Court.

The learned Judges think that Balderson was placed in an unfair position by David's uncertainty whether or no he would renounce. But it is difficult to see how that circumstance placed Balderson at any disadvantage, and there is no evidence whatever to shew that any embarrassment did in fact arise from it. It was very natural that David should make his renunciation dependent on the acceptance of his proposal, the more so because Balderson declined to prove if the proposal was

rejected, and their Lordships cannot appreciate the objections which have been raised to his so acting.

But then, the learned Judges ask, was the sale fair? The contract, they say, may have been fair enough between Balderson and David, supposing them to have been dealing as strangers at arms length, but unfair towards the testator's estate treating both parties as representatives of the estate and bound to protect the interests of the beneficiaries. And then they go on to shew the imperfect nature of Dixon's valuation, and their reasons for thinking that more ought to have been coming to John Clark's estate from the partnership.

Now if the contract was fair as between Balderson and David, that is sufficient to maintain it, for it was within Balderson's competence, and David never held any fiduciary position. But their Lordships desire to add that, notwithstanding a very ingenious argument at the bar, they cannot find from any evidence before them reason to think that David gave any great undervalue for the assets, even considered on the basis of a book valuation, while there is strong reason to think that the family got at least as much as they might have got by the only possible alternative—namely, winding up and sale. It is possible and probable that David got a good bargain, which he turned to good account, especially as the course of trade turned strongly in his favour the next year; but it does not follow that the family got a bad bargain.

Finally, the Court say, the sale could have been successfully challenged on the ground of a misrepresentation of value of the testator's estate, made by both Balderson and David directly to the plaintiff Jane Lawrence, and indirectly to the plaintiff John Clark, as it would naturally be repeated to him by all his relatives who heard it, and was in effect repeated to him by Balderson when he received the securities on which he was told that his share, 1,000*l.*, was invested. Upon this it is sufficient to observe that from the filing of the bill down to the argument at this bar there has not been any suggestion or insinuation on the part of the plaintiffs that Balderson made any misrepresentation or behaved otherwise than with honesty and with zeal for the family interest.

Even if a more adverse view could be taken of the conduct of David or of Balderson, there would be much difficulty in giving relief to persons who have so long delayed to make their claims. The younger of the plaintiffs attained majority nearly twelve years before the bill was filed. He then received from Balderson what he knew was his share of the tannery business. The other plaintiff, who also duly received her share, was old enough to be present at the family discussions in 1866, and knew the whole story perfectly well. The only excuse given for action after such long delay is the discovery of the partnership deed. Supposing that suggestion to be well founded in fact, it is clear that the question how much would be coming to the estate of John Clark from the partnership must be determined by the state of the accounts in January, 1866, and not by the agreed amount at the date of the deed; and that the value of the land must be determined by the state of the market at the time of the sale, and not by the agreed rent stated in the deed. But their Lordships cannot believe in the truth of the suggestion. The partnership deed was referred to and partially read at one of the family meetings attended by the plaintiff Jane. Allan, who was consulted by Jane, founded his claim on the contents of the partnership deed. It was not retained by David or by Balderson. It was handed to Ann by Balderson during the negotiations, he telling her that it was of no use, in which he was not far wrong. Ann kept it in her desk. In cross-examination she says:—"I knew it was there, but thought it was of no value. I looked among the papers, not particularly for a deed of partnership, but for what I then thought was a copy of a will. When I went lately I was looking for a deed of partnership. I remembered that I had such a thing. It was last year I got it, before August, 1881." Their Lordships cannot doubt that the purport of the deed was well known to the whole family, except possibly the plaintiff John, or that he knew that the partnership business purchased by his brother was carried on under some arrangement, the nature of which

he might have learned at any moment by asking a question of his sisters or of his brother-in-law.

Even if the deed had turned out to have a direct and strong bearing on the question of value, instead of a remote and weak one, its production under such circumstances as appear in this case would not justify the bringing of a suit after so long a lapse of time, during which the important testimony of Balderson was lost.

In the opinion of their Lordships this suit is one which ought not to have been brought. It was rightly dismissed by Mr. Justice Molesworth. The full Court ought to have dismissed the appeal with costs. Their Lordships will now humbly advise her Majesty to make an order to that effect. The costs of this appeal must be paid by the respondent John Clark, and the next friend of the respondent Jane Lawrence.

Solicitors—Keen, Rogers & Co., for appellant; Fowler & Perks, for respondent.

1884. June 25. PLIMMER AND ANOTHER (*appellants*) *v.* THE MAYOR, COUNCILLORS, AND CITIZENS OF WELLINGTON (*respondents*).

New Zealand—Foreshore of the Sea—Occupier—Improvements—Consent of the Crown—Equities of Occupier.

In the year 1848, *P., with the leave of the Government, moored a ship on the foreshore of a public harbour and used it as a wharf, and afterwards substituted a jetty in its place, which, at the request of the Government, was lengthened, and used by the Government till* 1878, *and a rent paid for such use*:—Held, *that P. had acquired a perpetual right to the jetty for the purpose of the original licence.*

This was an appeal from a judgment of the Court of Appeal of New Zealand.

The judgment appealed from was given upon a Case stated for the opinion of the Supreme Court by the President of the Compensation Court, established under the Public Works Act, 1882.

The Case is stated in their Lordships' judgment.

Webster, Q.C., and *F. Morton Ollivier* (New Zealand Bar), for the appellants.—The appellants had been in possession of the property in question, whether as tenants-at-will, or as mere occupiers, for more than twenty-one years, and had therefore acquired the fee. If they had not the fee, they had acquired a right to the use of the jetty, as an easement by prescription. The appellants have suffered by the operation of the Wellington Harbour Act, 1880. The Provincial Government induced the appellants to expend money in extending the structure in question. They referred to 3 & 4 Will. 4. c. 27, *Hale de jure maris*, c. 5, *The Attorney-General* v. *Terry* (1), *Ewing* v. *Colquhoun* (2), *The Attorney-General* v. *Lonsdale* (3), *The King* v. *Betts* (4), *Cory* v. *Bristow* (5), *Day* v. *Day* (6), and *Hall on the Seashore.*

Davey, Q.C., and *Elton*, for the respondents.—The land upon which the "original jetty" stood, and the extensions, and the other lands in respect whereof the appellants claim compensation, were parts of the sea-bed in the Port of Wellington, and had been parts of such sea-bed long before the appellants erected the jetty. The sea-bed is incapable of appropriation by any private person. The sea-bed is subject to public rights, which were infringed by the erection of the jetty. The jetty was an obstruction which might in future cause damage to the public rights in the port. The appellants had no right to erect any structure on any part of the sea-bed. By the laws of the colony, no title can be gained by prescription to occupy any part of the sea-bed. The statutory period of limitation applicable to private property had not run in favour of the appellants.

(1) Law Rep. 9 Chanc. 423.
(2) Law Rep. 2 App. Cas. 839.
(3) 38 Law J. Rep. Chanc. 335; Law Rep. 7 Eq. 377.
(4) 16 Q.B. Rep. N.S. 1022; 19 Law J. Rep. Q.B. 531.
(5) 46 Law J. Rep. M.C. 273; Law Rep. 2 App. Cas. 262.
(6) 40 Law J. Rep. P.C. 35; Law Rep. 3 P.C. 751.

They referred to *Locke* v. *Matthews* (7), *Laird* v. *Briggs* (8), *Ramsden* v. *Dyson* (9), *Dan* v. *Spurrier* (10), *The East India Company* v. *Vincent* (11), *Devonshire* v. *Eglin* (12), and *Russell* v. *Watts* (13).

Sir Arthur Hobhouse delivered the judgment of their Lordships (14):—

The sole question for their Lordships in this appeal is one which is put by the Special Case stated for the decision of the Supreme Court, namely,—"Had the claimants any estate or interest in the land upon which the remains of the jetty stood when such land became vested in the respondents under the Wellington Harbour Board and Corporation Land Act, 1880; and, if so, what was the nature of such estate or interest?" The Supreme Court have answered this question in the negative. Their Lordships will state briefly the material facts which explain the question.

In the year 1848 one John Plimmer moored an old hulk, known as *Noah's Ark*, in the bed and on the foreshore of Wellington Harbour for the purpose of a wharf and store. This was done by permission of the Crown, represented by Sir George Grey.

In January, 1855, there came an earthquake which raised the ground and so reduced the depth of water; and in order to carry on his business of a wharfinger John Plimmer erected a jetty extending to a considerable distance from the shore. The extension so made is coloured yellow on the plan used for the purpose of this appeal, and the land used for a portion of it is the land mentioned in the question. It was about 190 feet in length. It is not stated that any permission was obtained for this work.

On the 18th of October, 1855, the then Governor, acting under statutory powers, granted to the Superintendent of the Province of Wellington a portion of the harbour, including the land occupied by Plimmer. It is not necessary to follow minutely the legal title to the land. It is sufficient to say that, under whatever form, it has been continuously vested in Government for public purposes, that the use made of it by Plimmer was consistent with those purposes, and that Plimmer might by contract with the Government have acquired a perpetual interest in it for such purposes.

Some time before the month of June, 1856, John Plimmer, at the instance of the Provincial Government, extended his jetty about 112 feet further into the harbour. That extension is shewn by the green colour on the plan. He also reclaimed some land, and, at the suggestion of the provincial authorities, built thereon a warehouse or shed for the accommodation of immigrants, who were being introduced into the colony by the Provincial Government.

From the year 1856 to the year 1863, when the Queen's wharf came into use, Plimmer's jetty and warehouse were largely used for the immigrants, and charges were paid to him by the Government and others for such use.

In the year 1857 the Government began to reclaim portions of the harbour included in the grant of 1855 and contiguous to the land in Plimmer's occupation, and they proceeded to make on the reclaimed land a quay nearly at right angles to and across the yellow part of Plimmer's jetty. For the purpose of that work, with the permission of Plimmer, they cut away the shore end of his jetty. But his business was not interrupted thereby, for during the work he used a temporary gangway to connect his severed jetty with the shore; and when the work was completed, in the year 1861, he was permitted to connect the remaining portion of the jetty with the breastwork of the new quay.

Subject to the alterations above mentioned, Plimmer's jetty or wharf was continually used as a landing-place for passengers and goods from the time of the first placing of *Noah's Ark* down to the assumption of possession by the re-

(7) 13 Com. B. Rep. N.S. 753; 32 Law J. Rep. Q.B. 98.
(8) 50 Law J. Rep. Chanc. 260; Law Rep. 19 Ch. D. 22.
(9) Law Rep. 1 H.L. 129.
(10) 7 Ves. 231.
(11) 2 Atk. 83.
(12) 14 Beav. 530.
(13) Law Rep. 25 Ch. D. 559.
(14) Lord Watson, Sir Barnes Peacock, Sir Robert Collier, Sir Richard Couch, and Sir Arthur Hobhouse.

spondents. And in the year 1872 the Government, acting under statutory provisions, declared it to be a legal quay or landing-place.

The Special Case sets out in detail certain proceedings taken with reference to the reclamation of ground by the Government, and to a claim of pre-emption by Plimmer; but, in the view their Lordships have taken of the case, those transactions have little bearing on the question.

The title of the appellants stands as follows: In 1872 they became yearly tenants of John Plimmer. In 1875 John Plimmer sold to Jacob Joseph his interest in the jetty, then described as a certain freehold wharf which has been duly legalised as a landing-place, subject to the yearly tenancy of the appellants. Mr. Joseph subsequently granted to the appellants a lease for the term of twenty-one years, commencing from the 1st of January, 1879, at an annual rental of 75*l.* The date of this lease is not mentioned in the Case.

In the early part of the year 1878 the appellants extended the jetty some seven or eight feet, and on the 15th of March, 1878, the Secretary of Customs wrote to them as follows:—

"It has been reported to the Government that the wharf known as Plimmer's Wharf has recently been extended. I have therefore been directed by the Honourable the Commissioners of Customs to inform you that this wharf has been erected without the sanction or authority of the Government."

That letter is the earliest intimation of objection on the part of the Government. It must be taken that the latest extension of the jetty was trespass. But if the assertion as to want of sanction was meant to apply to the entire wharf, it is at variance with the whole preceding history of the case.

The land was vested in the respondents by a statute which came into force on the 1st of September, 1880. In April, 1881, they brought ejectment, to which of course the appellants had no defence, and in December, 1882, the respondents took possession.

The claim for compensation is made under a statute which came into force on the 13th of September, 1882, the terms of which may conveniently be quoted here. After reciting the statute of the 1st of September, 1880, it is enacted by section 4:—

"Every person who immediately before the date of the passing of the said Act had any estate or interest in to or out of the lands by the said Act vested in the Corporation, or any part of such lands, and every person who has suffered loss or damage by the vesting by the said Act of the said lands or any part thereof in the Corporation, may make a claim for and shall be entitled to receive full compensation from the Corporation: Provided always that, in ascertaining and determining the title of any claimant to compensation, the Compensation Court shall not be bound to regard strict legal rights only, but may award compensation in respect of any claim which the Compensation Court may consider reasonable and just, having regard to all the circumstances."

By the terms of the Special Case, and the proceedings taken in the Supreme Court, there is not in issue before this Board any question of compensation to the appellants, except such as depends on their having some estate or interest in, to, or out of the lands vested in the Corporation.

The appellants desire to rest their claim on the ground that John Plimmer was a trespasser throughout, and that a good title has been gained by possession without payment or acknowledgment. Countenance is given to this contention by the Government letter of the 15th of March, 1878; but, as before observed, the whole history of the case is against it. It is clear that, at least up to the year 1872, the Government and John Plimmer were acting in accord, and there is no trace of a trespass until the year 1878.

It is true that under the Statute of Limitations, 3 & 4 Will. 4. c. 27, which the counsel agreed to be in force in New Zealand, it is not necessary to shew trespass or adverse possession in order to gain a title by lapse of time. If the original permission is carried back far enough, the title may be gained by mere omission of acknowledgment. But their Lordships are of opinion, and so far they agree with the Supreme Court, that the transactions of 1857–61 amount to a new

arrangement. The subject-matter of the occupation was then changed, and changed by consent. And upon this question it makes no difference whether John Plimmer is regarded as a licensee or a tenant-at-will, for in either case the new agreement obliterates the effect of the previous lapse of time. And as these transactions did not end till some time in 1861, the requisite twenty years had not elapsed by the 1st of September, 1880, which is the point of time at which the respondents' interest is to be ascertained. For this reason it is unnecessary to examine whether any subsequent transactions affected John Plimmer's occupation in the same way.

The respondents, however, seek to attribute to the transactions of 1857–61 a much stronger effect. They insist that those transactions not only gave a fresh starting point for the lapse of time, but that they entirely destroyed the previous relations between the parties, so that prior agreements or equities cannot be taken into consideration. Their Lordships are asked to hold that the Government entered upon John Plimmer's occupation by its paramount title as owner, and that whatever was left to him was left of pure bounty. It would seem that the Supreme Court accepted this contention. They say that Plimmer did not give his permission to the operations of the Government on the ground that he claimed to be entitled to the fee-simple of the land, or that he asserted a legal right to it, but that he came as a suppliant to the Government, appealing not to his legal rights but to the public faith of the Province. And they hold that in 1861 he took as a mere tenant-at-will, and that the occupation remained on that footing until it was lawfully determined by the act of the respondents.

In these conclusions their Lordships are unable to agree. They cannot find anything in the Special Case to shew that John Plimmer failed to assert any right he possessed, or that he surrendered anything except by agreement, or that he or the Government acted as if he were at their mercy. The Special Case is obviously framed with great care so as to express what acts were done by permission, and what were done otherwise. It may be that Plimmer did not claim a fee-simple, seeing that he had no ground for such a claim; but it does not at all follow that he did not claim a right of permanent occupation, or that the Government did not recognise such a right. At all events, what we know is that there was mutual concession. Plimmer allowed the Government to take away the shore end of his jetty; and the Government allowed him to make a temporary gangway, and, when the works were completed, to have the support of their new quay for his jetty in its altered state. It is easy to imagine how both parties were calculated to benefit by the transaction; but we need not speculate on their motives. Their Lordships rest on the statements in the case, and from those statements they cannot draw any inference except that the transaction was one of mutual agreement between the parties for their mutual benefit, and not one of paramount right on the one side and appeals to mercy or to honour on the other. And the effect of the agreement is to leave John Plimmer with precisely the same interest in the altered jetty as he previously had in the original jetty. What was that interest?

Plimmer's original works were erected with the permission of the Government, and their Lordships think that he must be taken to have occupied the ground under a revocable licence to use it for special purposes—namely, those of a wharfinger. Whether the yellow extension was so held when first made need not be discussed, because after the month of June, 1856, when the green extension had been made, the whole was certainly held upon the same tenure. In their Lordships' opinion it was still held upon licence to use for the original purposes, but by the transactions of 1856 the licence had ceased to be revocable at the will of the Government.

The law relating to cases of this kind may be taken as stated by Lord Kingsdown in the case of *Ramsden* v. *Dyson* (9). The passage is at page 170:—

"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation created or encouraged by the landlord that he shall have a certain

interest, takes possession of such land with the consent of the landlord, and, upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory* v. *Mighell* (15), and, as I conceive, is open to no doubt. If at the hearing of the cause there appears to be such uncertainty as to the particular terms of the contract as might prevent a Court of equity from giving relief if the contract had been in writing but there had been no expenditure, a Court of equity will nevertheless, in the case which is above stated, interfere in order to prevent fraud, though there has been a difference of opinion amongst great Judges as to the nature of the relief to be granted. Lord Thurlow seems to have thought that the Court would ascertain the terms by reference to the Master, and if they could not be ascertained would itself fix reasonable terms. Lord Alvanley and Lord Redesdale, and perhaps Lord Eldon, thought this was going too far; but I do not understand any doubt to have been entertained by any of them that, either in the form of a specific interest in the land, or in the shape of compensation for the expenditure, a Court of equity would give relief, and protect in the meantime the possession of the tenant. If, on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or an allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any Court of law or equity can enforce. This was the principle of the decision in *Pilling* v. *Armitage* (16), and, like the decision in *Gregory* v. *Mighell* (15), seems founded on plain rules of reason and justice."

This case of *Ramsden* v. *Dyson* (9) was strongly pressed in argument against the conclusion to which their Lordships have come; and it was said that Lord Cranworth's judgment, which represented the opinion of the majority, lays it down that an equity of the sort now relied on cannot be raised unless the occupant who improves the land believes it to be his own, and the owner of the improved land knows of that mistaken belief. But there was no disagreement among the Judges on the principles of law laid down in that case. Only Vice-Chancellor Stuart first, and after him Lord Kingsdown, drew from the evidence inferences of fact at variance with those drawn by the majority of the House, and so brought out a different legal conclusion.

The main conclusions of fact to which Lord Cranworth applied his principles of law were, to state them very briefly, as follows: that as to part of the improved land, the tenant, when taking it for building purposes, expressly contracted in writing to hold it at will; that as to all the land, he was a substantial gainer in point of rent by so holding; that he never believed he had any higher right; that the landlord never knew or suspected what kind of assurance his agent was holding out to the tenant; but that, even if the statements of the agent were to be ascribed to himself, he expressly refused to come under any legal obligation, and the tenant as expressly submitted to trust to the honour of the Ramsden family.

In the present case the equity is not claimed, because the landowner has stood by in silence while his tenant has spent money on his land. This is a case in which the landowner has, for his own purposes, requested the tenant to make the improvements. The Government were engaged in the important work of introducing immigrants into the colony. For some reason, not now apparent, they were not prepared to make landing-places of their own, and in fact they did not do so until the year 1863. So they applied to John Plimmer to make his landing-place more commodious by a substantial extension of his jetty and the erection of a warehouse for baggage. Is it to be said that, when he had incurred the expense of doing the work asked for, the Government could turn round and revoke his licence at their will? Could they in July, 1856, have deprived him summarily of the use of the jetty? It would be in a high degree

(15) 18 Ves. 328.
(16) 12 Ves. 78.

unjust that they should do so; and that the parties should have intended such a result is, in the absence of evidence, incredible.

With respect to the occupant's belief in his own title, and the knowledge of that belief on the part of the Government, it may be worth while to remark that the land in question was not like ordinary private property. It was the bed of the sea, useless till somebody converts it to use, and not unfrequently used by unauthorised persons to get profit by accommodating the public. It is difficult to suppose that a person who is so using the sea-bed, and the Government who are its owners, can go on dealing with one another in the way stated in this case for a series of years, except with a sense in the minds of both that the occupant has something more than a merely precarious tenure. Their Lordships will not be the first to hold, and no authority has been cited to them to shew, that after such a landowner has requested such a tenant to incur expense on his land for his benefit, he can, without more, and at his own will, take away the property so improved. Their Lordships consider that this case falls within the principle stated by Lord Kingsdown as to expectations created or encouraged by the landlord, with the addition that in this case the landlord did more than encourage the expenditure, for he took the initiative in requesting it.

On this view it becomes quite intelligible why, before the Government interfered with Plimmer's jetty in executing their works of 1857–61, they should have obtained his permission, which on the other view was not necessary. And the subsequent transactions down to 1878, though they do not lend any strong support to the same view, are consistent with it, and are rather more favourable to it than to the opposite one. The Government used, paid for, and gave a legal status to the property which it is now said they might have taken to themselves.

The question still remains as to the extent of interest which Plimmer acquired by his expenditure in 1856. Referring again to the passage quoted from Lord Kingsdown's judgment, there is good authority for saying what appears to their Lordships to be quite sound in principle, that the equity arising from expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated.

In such a case as *Ramsden* v. *Dyson* (9) the evidence (according to Lord Kingsdown's view) shewed that the tenant expected a particular kind of lease, which Vice-Chancellor Stuart decreed to him, though it does not appear what form of relief Lord Kingsdown himself would have given. In such a case as the *Duke of Beaufort* v. *Patrick* (17) nothing but perpetual retention of the land would satisfy the equity raised in favour of those who spent their money on it, and it was secured to them at a valuation. In such a case as *Dillwyn* v. *Llewelyn* (18) nothing but a grant of the fee-simple would satisfy the equity which the Lord Chancellor held to have been raised by the son's expenditure on his father's land. In such a case as that of *The Unity Bank* v. *King* (19) the Master of the Rolls, holding that the father did not intend to part with his land to his sons who built upon it, considered that their equity would be satisfied by recouping their expenditure to them. In fact, the Court must look at the circumstances in each case to decide in what way the equity can be satisfied.

In this case their Lordships feel no great difficulty. In their view, the licence given by the Government to John Plimmer, which was indefinite in point of duration but was revocable at will, became irrevocable by the transactions of 1856, because those transactions were sufficient to create in his mind a reasonable expectation that his occupation would not be disturbed; and because they and the subsequent dealings of the parties cannot be reasonably explained on any other supposition. Nothing was done to limit the use of the jetty in point of duration. The consequence is that Plimmer acquired an indefinite, that is practically a perpetual, right to the jetty for the purposes of the original licence,

(17) 17 Beav. 60; 22 Law J. Rep. Chanc. 489.

(18) 4 De Gex, F. & J. 517; 31 Law J. Rep. Chanc. 658.

(19) 25 Beav. 72; 27 Law J. Rep. Chanc. 585.

and if the ground was afterwards wanted for public purposes it could only be taken from him by the Legislature.

An analogy to this process may be found in such cases as *Winter* v. *Brockwell* (20) and *Liggins* v. *Inge* (21). These cases shew that where a landowner permits his neighbour to execute works on his (the neighbour's) land, and the licence is executed, it cannot be revoked at will by the licensor. If indefinite in duration, it becomes perpetual. Their Lordships think that the same consequence must follow where the licence is to execute works on the land of the licensor, and owing to some supervening equity the licence has become irrevocable.

There are perhaps purposes for which such a licence would not be held to be an interest in land. But their Lordships are construing a statute which takes away private property for compensation, and in such statutes the expression "estate or interest in to or out of land" should receive a wide meaning. Indeed the statute itself directs that, in ascertaining the title of anybody to compensation, the Court shall not be bound to regard strict legal rights only, but shall do what is reasonable and just. Their Lordships have no difficulty in deciding that the equitable right acquired by John Plimmer is an interest in land carrying compensation under the Acts of 1880 and 1882.

The proper answer to the question will be as follows:—That John Plimmer acquired and transferred to Jacob Joseph a perpetual right to occupy and use the land in question for the purposes of a jetty or wharf, and that the interest which the appellants had in the land on the 1st of September, 1880, was the term which then remained to them under the lease granted to them by Jacob Joseph. Their Lordships will humbly advise her Majesty that an answer to the foregoing effect be substituted for the answer given by the Supreme Court, and the respondents must pay the costs of the appeal.

(20) 8 East, 308.
(21) 7 Bing. 682.

Solicitors -J. & R. Gole, for appellants; W. & J. Flower & Nussey, for respondents.

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Promissory Note. See POWER OF ATTORNEY.

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Vendor and Purchaser. See CANADA.

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Victoria—*Melbourne harbour trust act*, 1876, *s.* 46: *construction: notice of action*]—The Melbourne Harbour Trust Act, by section 46, provides that notice of action shall be given to any "person" before the issue of any writ for anything done under the Act. By the interpretation clause "person" shall include a corporation:—*Held*, first, that commissioners appointed under the Act were persons within the meaning of the Act; secondly, that a letter complaining of certain acts but not referring to legal proceedings was not a notice of action within the meaning of the Act. *The Union Steamship Co. of New Zealand* v. *The Melbourne Harbour Trust Commissioners*, 59

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A Crown grant of land contained a proviso for re-entry for public purposes without compensation:—*Held*, that a notice by the Crown to such a grantee to take land must be deemed to be in respect of the proviso contained in the grant and not in pursuance of the Act, and that therefore the grantee was not entitled to compensation. Ibid.

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THE

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FOR

THE YEAR 1884:

CASES

IN THE

Probate, Divorce and Admiralty Division

OF

THE HIGH COURT OF JUSTICE,

REPORTED BY

EDMUND FULLER GRIFFIN AND HENRY STOKES,

BARRISTERS-AT-LAW;

AND ON APPEAL THEREFROM

IN

The Court of Appeal and House of Lords,

REPORTED BY

ARTHUR CLEMENT EDDIS, ROBERT BRUCE RUSSELL,
WILLIAM EDWARD GORDON, GEORGE ABBOTT STREETEN,
EDWARD NASH,

AND

(*in the House of Lords*) LIONEL LANCELOT SHADWELL,

BARRISTERS-AT-LAW.

MICHAELMAS 1883 TO MICHAELMAS 1884.

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CASES ARGUED AND DETERMINED

IN THE

Probate, Divorce and Admiralty Division

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COURT OF APPEAL AND HOUSE OF LORDS.

MICHAELMAS 1883 TO MICHAELMAS 1884.

47 Victoriæ.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. Nov. 22. } COLE *v.* THE GREAT YARMOUTH STEAM-TUG COMPANY. THE UNITED SERVICE.*

Towage — Negligence — Contract exempting Owners of Tug from Liability.

Where the owners of a tug gave notice that they would not be answerable for any loss or damage occasioned to any vessel, boat or craft, while in tow of the tug, by any negligence or default of them or their servants, and such notice formed part of the contract between the plaintiff and the defendants,—Held, *affirming the decision of the Judge of the Admiralty, that the owners of the tug were not liable for the loss of the plaintiff's vessel while being towed by the defendants' tug, although the tug took in tow more vessels than she could manage, and more than were allowed by the regulations made under the Piers and Harbours Act*, 1847 (10 *&* 11 *Vict. c.* 27), *and the Yarmouth Port Act*, 1866.

Appeal from the judgment of the Judge of the Admiralty Division.

The case is reported 52 Law J. Rep. P., D. & A. 18.

Action against the defendants, who had contracted to tow a fishing-smack, the property of the plaintiff. The contract contained a condition that the defendants would not be "answerable or accountable for any loss or damage whatever which may happen to or be occasioned by any vessel, boat or craft, or any of the cargoes on board of the same, while such vessel, boat or craft is in tow of either of the steam-tugs in the river or at sea, and whether arising from or occasioned by any supposed negligence or default of them or their servants, or defects or imperfections in the said steam-tugs or either of them, or the machinery or any other part of the same."

The defendants' tug, having already three smacks in tow, took the smack of the plaintiff in tow down the Yarmouth river, and afterwards took three other vessels in tow.

The regulations made under the Harbours Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), and a local Act of 1866, forbid a tug to take more than six vessels in tow at once.

The current was strong, the tide was flood, and the sea proved too strong for the tug with seven vessels, though she could have towed four with safety, and the smack of the plaintiff was wrecked.

In an action by the owner of the smack for damages for the loss, Sir R. Phillimore gave judgment for the defendants.

The plaintiff appealed.

Phillimore, for the plaintiff.—There is an implied warranty that the tug will not tow more vessels than she can manage, and that she will remain able to tow during the whole period of towage, just as there is a warranty of seaworthiness

* *Coram* Brett, M.R.; Baggallay, L.J., and Bowen, L.J.

between a cargo owner and a shipowner. The notice cannot exclude a warranty given by the common law. *Steel* v. *The State Line Company* (1), *The Julia* (2) and *The Minnehaha* (3) were cited.

J. G. Witt (*Webster, Q.C.*, with him), for the defendants, was not called on.

BRETT, M.R.--This appeal must be dismissed. The notice formed part of the contract between the plaintiff and the defendants, and it entirely covers this case.

BAGGALLAY, L.J., and BOWEN, L.J., concurred.

Appeal dismissed.

Solicitors—Ingledew & Ince, agents for Clowes & Son, Yarmouth, for plaintiff; Pritchard & Sons, agents for C. H. Wiltshire, Yarmouth, for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1883. Dec. 3. } THE BENARES.*

Collision—Regulations for Preventing Collisions at Sea—Departure from Rules to avoid immediate Danger—Articles 18 *and* 23—36 *&* 37 *Vict. c.* 85. *s.* 17.

In order to take a vessel out of article 18 *and bring her within article* 23 *of the Regulations for Preventing Collisions at Sea, the departure from article* 18, *which, under the provisions of* 36 *&* 37 *Vict. c.* 85. *s.* 17, *must be read with article* 23, *must not only be reasonable, but the only chance of avoiding an immediate danger.*

The Khedive (Law Rep. 5 App. Cas. 876) *explained.*

Appeal from a judgment of Sir R. Phillimore.

The action arose out of a collision in the English Channel between the barque *Benares* and the steamship *Gerarda*. Sir R. Phillimore had given judgment against the owners of the *Benares* upon the ground that the collision was caused by the absence of a red light on board the *Benares*, which was alone to blame, and that the *Gerarda*, which was making about seven knots per hour, was not to blame for not stopping and reversing. During the argument of the appeal from that judgment it was contended that the *Gerarda*, by reason of the speed at which she was going, approached the *Benares* so as to involve risk of collision, and, not having slackened speed, had therefore infringed article 18 of the Regulations for Preventing Collisions at Sea, 1880.

By article 18, "Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary."

By article 23, "In obeying and construing these rules due regard shall be had to all dangers of navigation, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

By the Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85), s. 17, "If in any case of collision it is proved to the Court before which the case is tried that any of the regulations for preventing collision contained in or made under the Merchant Shipping Acts, 1854 and 1873, has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault unless it is shewn to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary."

Hall, Q.C., and *Bucknill* (with them *W. R. Kennedy*), for the owners of the *Benares*, contended that, upon the authority of *The Khedive* (1), rule 18 was imperative, and that a deviation from it was only justifiable where the danger was external, as from the perils of the sea; and that a steamer was bound to obey the article, even where to continue at full speed would be the only chance of avoiding the collision.

(1) Law Rep. 5 App. Cas. 876.

(1) Law Rep, 3 App. Cas. 72.
(2) 14 Moore P.C. 210.
(3) 1 Lush. 335.

* *Coram* Brett, M.R.; Baggallay, L.J.; Bowen, L.J., and Nautical Assessors.

The Benares (App.), Adm.

Finlay, Q.C., and *Phillimore*, were not called upon to argue.

BRETT, M.R., after expressing an opinion that the collision was brought about by the absence of a red light on board the *Benares*, proceeded:—If article 18 applied under the circumstances, the captain of the *Gerarda*, there being no other vessel in the way, ought to have slackened speed, or, if necessary, stopped and reversed, and, had he not done so, he would have broken the article. The rules of navigation, however, are contained, not in article 18 alone, but in all the articles, and article 23 provides a case in which article 18 is not to be observed. It may be that, even if the *Benares* had placed the *Gerarda* in such a position that any reasonable man would have done what the captain of the *Gerarda* had done, yet, if the Court upon the whole facts could not come to the conclusion that the case came within article 23, the owner of the latter ship would, nevertheless, be liable. I accept that to be the law as laid down in the case of *The Khedive* (1), however harsh it may seem. The case, however, is brought within article 23, and therefore taken out of article 18, if the necessity of the particular case was such and the circumstances were so special as to render a departure from article 18 necessary in order to avoid a collision. In the present case we have been advised as a fact that the ships were in such a position at the moment when article 18 would have applied that the only means of avoiding a dangerous collision was for the *Gerarda* to starboard her helm and proceed at full speed. If the position of the ships at the time when article 18 would have applied was such that the only means of avoiding an immediate and dangerous collision was for the captain of the *Gerarda* not to act upon article 18, but to act in the manner in which he did act, then it was necessary for him, within the meaning of article 23, to act as he did act in order to avoid an immediate danger. If that be so, the case is brought within article 23. It was contended that article 23 did not apply, because it was said that it had been decided in the case of *The Khedive* (1) that the rule did not apply to danger arising from ships approaching each other, but to some outside danger. But, in my opinion, the House of Lords did not so decide. Acting upon the advice which has been given to us in this case, I am of opinion that the case comes within article 23, and I therefore agree with the judgment of the Court below.

BAGGALLAY, L.J.—I am of the same opinion. It was decided in the case of *The Khedive* (1) that the articles must, under section 17 of 36 & 37 Vict. c. 85, be strictly followed, and that actual necessity, and not merely considerations of discretion or expediency, even though skilfully acted upon, can alone excuse their non-observance. The decision in that case was based upon the particular circumstances. The question there was not whether the circumstances were such as to render it necessary to depart from the article in order to avoid danger, but whether the captain, having actually departed from the article, could be excused, under the circumstances, for acting as he had acted. In the present case articles 18 and 23 must be read together; and, acting upon those regulations, and the advice which has been given by the Assessors, I have come to the conclusion that the case does fall within article 23, and that there was sufficient justification for departing from article 18.

BOWEN, L.J.—I am of the same opinion. It seems to me to have been decided in the case of *The Khedive* (1) that, when the article has been infringed, it is no answer to say that the person so infringing it has acted to the best of his ability, but that the rule must be obeyed, and that he cannot simply excuse himself for not having done so. The question is whether article 18 has been infringed. If that article stood by itself it might be said that it had been infringed, but it is to be read together with article 23. The House of Lords, however, points out in the case of *The Khedive* (1) that the two articles are to be read together by the light of section 17 of the Merchant Shipping Act, 1873. By that section it must be shewn to the Court where the articles have been infringed that the circumstances of the case made a departure from the rule necessary, and the words of the section are not unlike

those of article 23. In order to excuse an infringement of article 18 it must be shewn that what the captain did was necessary. It is not sufficient to shew that what he did was advisable. Section 17 says that, when a departure from the article is necessary, such departure will be excused. The question, therefore, is whether the departure was necessary. It was argued that it was not, even where it is the only chance of safety, and that success was the only justification. But that contention will not hold, because article 18 itself assumes that there has been a collision. It was also said that the risk must be more than the mere danger of collision, and that it must be some peril by sea or from the land. But the result of such a contention would be that a man when he is placed in danger from land may refrain from stopping, but when at sea, although he has the lives of all the people on board under his care, he may not do so. Although this is an extreme case, yet it is the fairest way of testing whether the contention raised would not reduce the article to an absurdity. Unless some reasonable interpretation be put upon the article the captain must act blindly. If by disobeying the article he has just one, and only one, chance of avoiding an inevitable danger and of saving the lives of those on board, it seems to me that that is a case in which a departure from the article would be justifiable.

Appeal dismissed.

Solicitors—Pritchard & Sons, for appellants; T. Cooper & Co., for respondents.

ADMIRALTY.
1883.
Dec. 4.

THE WARKWORTH.

Limitation of Liability — Collision — Improper Navigation — Merchant Shipping Act Amendment Act, 1862 (25 & 26 *Vict. c.* 63), *s.* 54, *sub-s.* 4.

The owners of the steamship W. were held liable for a collision which was caused by her steam steering gear breaking down. The defect in the steering gear was due to the negligence of certain persons on shore who were employed by the owners, and not to any negligence on the part of the crew. In an action by the owners of the W. to limit their liability under the provisions of the Merchant Shipping Act Amendment Act, 1862,—Held, *that the damage was caused by the "improper navigation" of the W., within the meaning of section* 54, *sub-section* 4, *of that Act, and that the owners were entitled to a decree of limitation.*

The steamship *Warkworth*, while on a voyage from Newcastle-on-Tyne to Rotterdam, came into collision with the ship *British Enterprise*. At the trial of an action for damage brought by the owners of the *British Enterprise* against the owners of the *Warkworth*, it appeared that the collision was caused by the steam steering gear of the *Warkworth* breaking down, owing to the absence of a proper pin to fix a nut, which in its turn kept the valve in its place on the spindle. It was proved that the absence of this pin was not owing to the negligence of any of the crew of the *Warkworth*, but to the default of some persons on shore who were employed by the owners to look after the steam steering gear while the ship was in port. The owners were held liable for the collision.

They now brought their action to limit their liability under the provisions of the Merchant Shipping Act Amendment Act, 1862.

The defendants pleaded that "the loss and damage caused by the *Warkworth* . . . . was not caused by reason of any improper navigation of the *Warkworth*, within the meaning of section 54, sub-sec-

tion 4, of the Merchant Shipping Act Amendment Act, 1862."

Finlay, Q.C. (*J. G. Barnes* with him), for the plaintiffs.—The words "improper navigation" have not the restricted meaning sought to be put upon them. The defendants are driven to contend that if anything were done or omitted to be done by one of the crew, the owners can limit their liability, but not if some one on shore does or omits something which in the absence of that person would be done by the engineer of the ship. How can it affect the question what is "improper navigation," whether the act or default is that of some person who is employed on shore or on board ship? The question what is navigation must depend on what the act is, not on the person by whom the act is done. Take the case of ships' lanterns improperly repaired on shore, so that they go out, and a collision ensues. Can it be said that that is not "improper navigation"? Or a defective link in the chain-cable which parts, and the ship drags into collision.

He cited *Good* v. *The London Steamship Owners' Mutual Protecting Association* (1).

R. E. Webster, Q.C. (*Phillimore* with him), for the defendants.—This section is intended to limit a common law liability, and must therefore be construed strictly. It does not cover a case of improper construction. It is in favour of the defendants that the limitation under sub-sections 1 and 2 is wider. If there is something to be done to the ship to put her in proper condition before she starts, how can the failure to do it be said to be "improper navigation"? The argument need not be limited to manœuvring; but if the damage is caused, not by the wrongful act of any one on board, but by the structural defect of the ship herself, that is not "improper navigation." It is proved that it was not within the scope of the engineer's duty to look after this steering gear; but an independent firm of marine engineers is employed by the owners for that purpose. It is submitted that this is not the class of wrongful act or default from which the Legislature intended to protect owners.

He cited *Gale* v. *Lawrie* (2), *The Andalusian* (3), *Chapman* v. *The Royal Netherlands Steam Navigation Company* (4), *Steel* v. *The State Line Steamship Company* (5) and *The Ettrick* (6).

Finlay, Q.C., in reply.

BUTT, J.—This is an important case, and one involving very considerable difficulty. In the first place, I do not agree that these statutes enabling shipowners to limit their liability are not most valuable Acts of Parliament; nor do I agree with the contention that, because they interfere with what have been called common law rights, they are to be construed differently to other statutes. In approaching this particular question, it seems to me that the intention of the Legislature in these Acts of Parliament has been to relieve, or rather to some extent to relieve, shipowners from the liability caused by the negligence of their servants. *Prima facie* I do not see why this relief should be limited to a case in which damage has occurred through the negligence of the master and crew, or why the same considerations should not apply to the negligence of persons, other than the master and crew, employed by the shipowner to attend to the ship in preparation for the voyage—as, for example, a marine engineer employed while the ship is in port to overhaul the machinery. It seems to me that this conclusion is strengthened by the wording of the two first sub-sections, which omit the words "improper navigation," and allow limitation of liability where the loss occurs without the actual fault or privity of the owner. In my opinion, this shews an intention to relieve the shipowner where damage has been caused by the negligence of his servants, where he himself has not been to blame. But it is said that would be all

(1) Law Rep. 6 C.P. 563.

(2) 5 B. & C. 156.

(3) 47 Law J. Rep. P., D. & A. 65; Law Rep. 3 P. D. 182.

(4) 48 Law J. Rep. Chanc. 449; Law Rep. 4 P. D. 157.

(5) Law Rep. 3 App. Cas. 72.

(6) 50 Law J. Rep. P., D. & A. 65; Law Rep. 6 P. D. 127.

The Warkworth, Adm.

very well, if it were not for the positive wording of the sub-section in question——namely, sub-section 4 — which enables an owner to limit his liability only where the loss or damage is occasioned by "improper navigation." It is said that "improper navigation" cannot be construed to mean anything other than the negligence of the master and crew in the course of the voyage. *Prima facie* it would seem to be "improper navigation" for a steamship to run into a vessel at anchor. In such a case the damage might be caused by the negligence of the persons in charge of the ship, or it might be caused, for example, by improper loading of the ship by the stevedore. Take a case in which a ship is so negligently loaded by the stevedore that it is found, after the voyage has commenced and when it is too late to remedy it, that the ship will not answer her helm, and runs into another vessel, through no fault of the master and crew. I confess I do not see why that is not "improper navigation." I suggested, during the course of the arguments, other possible circumstances, as where persons at the order of the owners supply improper coals to the ship, and the engineers are unable to keep steam on their boilers, and, in consequence, a collision occurs. Why is that not "improper navigation"? Let us now suppose that an accident has occurred from the falling out of a pin, as in the present case, and that that pin had been put in negligently by the engineer during the voyage. It is not contended that that would not be "improper navigation." Let us now go a step further, and suppose that the ship's engineer had put in the pin while in port, an hour before the ship started on her voyage. Could it be then said that the collision was not caused by "improper navigation"? Now, suppose that, while the ship is in port, a marine engineer is sent by the owners to overhaul the machinery, and he, in the ordinary course of his business, puts in the pin—why should it be less "improper navigation" if the pin be put in by the marine engineer than if put in by the ship's engineer? I have a very strong feeling that this case is within the intention of the Act, and, so feeling, I am strengthened in refusing any interpretation of the Act which would tend to thwart its object. I therefore come to the conclusion that I am not prevented from saying that there has been "improper navigation" of this ship, and that this Act applies. I accordingly grant a decree in the terms asked for.

Solicitors—Thomas Cooper & Co., for plaintiffs; Gregory, Rowcliffes & Co., for defendants.

ADMIRALTY. 1883. Nov. 27.

THE PALERMO.

Discovery—Inspection of Documents—Copies of Depositions made before Receiver of Wrecks—Privilege.

In a collision action the plaintiffs' solicitors, for the purposes of the action, obtained from the Board of Trade copies of depositions made before the Receiver of Wrecks by the master and crew of the plaintiffs' ship as to the circumstances of the collision:—Held, *that the copies, having been obtained by the solicitors for the purposes of the action, were privileged, and that the Court would not enquire for what purpose the original depositions were made.*

Action for damage by collision.

Stubbs, for the defendants, moved for an order to inspect certain documents described as copies of depositions made by the master and crew of the plaintiffs' ship, the *Rivoli*, before the Receiver of Wrecks, under the 432nd section of the Merchant Shipping Act, 1854, and obtained by the plaintiffs' solicitors for the purposes of advising the plaintiffs as to their rights against the defendants, and for the purposes of the action. These documents are copies of depositions which are not privileged. It is true the copies were obtained

The Palermo, Adm.

for the purposes of the action; but the proper thing to look at, is the purpose for which the original depositions were made.

It is immaterial what the copies were made for, as it is the substance of the depositions, not the piece of paper on which they are written, of which inspection is sought.

He cited *Bustros* v. *White* (1) and *The Southwark and Vauxhall Waterworks Company* v. *Quick* (2).

Phillimore, contra, cited *Anderson* v. *The Bank of British Columbia* (3).

BUTT, J.—In this case I am not disposed to order, neither shall I order, the inspection of the copies of these documents. In the first place, I am not at all sure that the Board of Trade would not be right in refusing copies of such documents as these to the public. I do not know in this particular instance what the documents are; but I know that they are documents taken from masters of vessels by officers of the Board of Trade, or persons acting for the time as such, for statistical purposes; and I think it would be very undesirable that masters of ships should be interrogated for a number of facts for statistical purposes, and then that these reports or returns so made should be disclosed; because it would simply end in this—that masters of vessels would be instructed by their owners not to supply more information than they could help, and the public service would necessarily suffer. I am not, therefore, disposed to go out of my way to force disclosure of such documents as these. In the first place, I think this doctrine of discovery has been carried quite far enough by the Courts. I will not presume to say that the decided cases have gone too far; but I will say that I will not carry the matter one step further. That being so, what is the fact here? Discovery is sought of certain documents, and those documents are copies of certain depositions. These copies, which are the documents of which discovery is sought, were obtained for the purposes of this suit, and form—to use the expression made use of in some of the cases—part of the brief. That being so, I think it comes within the privilege, and I shall not go out of my way to enquire for what purpose the original depositions were made. Copies having been obtained for the purpose of the suit, as part of the brief, and the copies being documents of which disclosure is asked, I hold that these copies are privileged, and I decline to make the order.

[N.B.—From this decision the defendants appealed, and on the 3rd of December the Court of Appeal (*coram* Brett, M.R., Baggallay, L.J., and Bowen, L.J.), dismissed the appeal, without delivering formal judgment.]

(1) 45 Law J. Rep. Q.B. 642; Law Rep. 1 Q.B. D. 423.
(2) 47 Law J. Rep. Q.B. 258; Law Rep. 3 Q.B. D. 315.
(3) 45 Law J. Rep. Chanc. 449; Law Rep. 2 Ch. D. 644.

Solicitors—Thomas Cooper & Co., for plaintiffs; Stokes, Saunders & Stokes, for defendants.

ADMIRALTY.
1883.
Dec. 4.

THE HUMBER.

Practice—Appeal from Passage Court of Liverpool—Time for Appeal expired—Enlargement of Time—The County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 *Vict. c.* 71), *ss.* 25, 26 *and* 27—*The County Courts Act*, 1875 (38 & 39 *Vict. c.* 50), *s.* 6.

Section 6 *of the County Courts Act*, 1875, *provides an alternative mode of appeal by way of motion, but does not supersede the old practice with regard to appeals from inferior Courts having Admiralty jurisdiction. The provisions of the Act of* 1868, *therefore, relating to appeals from the Court of Passage are still in force, and*

the discretionary power of the Court to allow an appeal after the time for such appeal has expired, remains.

This was an application by way of motion for leave to appeal from a judgment of the Court of Passage of Liverpool, notwithstanding the time limited for lodging the instrument of appeal had elapsed. It appeared that the action was heard on the 17th of October, and judgment given for the defendants. The plaintiffs, the present appellants, resided in Russia, and before notice of appeal could be given, it was necessary to communicate with them. Their answer was not received by their solicitors until the evening of the 26th of October. On the 27th the solicitors attended before the Registrar, to fix the amount of security for costs, the lodging of which, is a condition precedent to the bringing of the appeal. The question was discussed, and then adjourned by the Registrar, without prejudice to the appellants' right to lodge their instrument of appeal on that day. The notice of appeal was accordingly lodged, and on a subsequent day an order was made by the Registrar that security should be given by cash deposit of 40*l.* This order was complied with; and the appellants, upon receiving notice from the respondents that they should contend, on the hearing of the appeal, that the notice was bad, security not having been given in time, abandoned the former notice, and now came to the Court for leave to appeal, notwithstanding the time had expired.

Phillimore, for the appellants, moved accordingly. He cited *The Forest Queen* (1) and *The Ganges* (2).

Myburgh, Q.C. (*Bucknill* with him), for the respondents.—The procedure is governed by the County Courts Act, 1875, section 6, and the old procedure is entirely superseded. If that is so, the appeal must be by motion, and the Court has no jurisdiction to extend the time. He cited *Tennant* v. *Rawlings* (3).

Phillimore, in reply.—The Act of 1875 only gives an alternative form of appeal, and does not do away with the old one. The Act only uses the words "it shall be lawful"; it does not say the appeal "shall be" by way of motion. He cited *The Amstel* (4).

THE PRESIDENT (SIR JAMES HANNEN).—I am of opinion that we have still discretionary power to extend the time for lodging the "instrument of appeal," and that we ought to do so in this case. It is a mere slip that the appellants are out of time: they did not lie by, but contemplated an appeal from the first. I have not been able to see any answer to the 26th and 27th sections of the Act of 1868, where these appeals are dealt with. That Act has never been repealed, and is therefore still in force. The leave asked for will therefore be granted.

BUTT, J.—I am of the same opinion. The Act of 1875 only provides an alternative mode of appeal. The sections of the Act of 1868 with reference to these appeals are not repealed; the Act of 1875 therefore does not supersede them. That being so, our discretion remains, and it seems to me this is a very proper case in which to exercise it.

Solicitors—Toller & Co., agents for Stone, Fletcher & Hull, Liverpool, for plaintiff; Gregory, Rowcliffes & Co., agents for Hill, Dickinson & Co., Liverpool, for defendants.

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(1) 40 Law J. Rep. Adm. 17; Law Rep. 3 Adm. 299.
(2) Law Rep. 5 P. D. 247.
(3) Law Rep. 4 C.P. D. 133.
(4) 47 Law J. Rep. P., D. & A. 11; Law Rep. 2 P. D. 186.

DIVORCE.
1883.
Nov. 13, 27.

WELDON *v.* WELDON.

Restitution of Conjugal Rights—Decree — Enforcement — Attachment—20 & 21 *Vict. c.* 85. *ss.* 17 *and* 22.

A decree against a husband for restitution of conjugal rights is not satisfied by the respondent providing a house with furniture and servants for the use of the petitioner, and offering to pay her a yearly allowance, if he does not return to cohabitation, and his obedience to the decree will therefore be enforced by attachment.

In this case a wife had obtained a decree for restitution of conjugal rights.

The respondent did not return to cohabitation, but he had made an affidavit in which he stated that since the date of the decree he had taken a furnished house for the petitioner, and had provided two servants to wait upon her, and that he was also prepared to pay her an allowance of 500*l.* per annum.

The facts of the case are more fully stated in the judgment.

The petitioner, in person, moved the Court to issue an attachment against the respondent for non-compliance with the decree for restitution of conjugal rights.

Inderwick, Q.C. (with him *Searle*), for the respondent.—The order of the Court has been complied with by the respondent providing a house for the petitioner, with furniture and servants, and undertaking to pay her an adequate allowance. It is submitted that the old practice of the Ecclesiastical Courts in suits for restitution of conjugal rights will not now be followed, although the form of procedure is unchanged. In *Orme* v. *Orme* (1), it was held by Sir Christopher Robinson that residence under the same roof with the petitioner was a sufficient compliance with the order of the Court; but since the passing of the Divorce and Matrimonial Causes Act, 1857 (2), even that is not necessary. Under the old jurisdiction a suit for restitution of conjugal rights was a wife's only remedy for compelling her husband to support her, for desertion not coupled with adultery gave her no remedy; while a voluntary separation was not recognised by the law, and separation deeds were considered to be contrary to public policy. On the other hand, the Divorce and Matrimonial Causes Act, 1857 (2), has given the wife a new remedy by a suit for a judicial separation on the ground of desertion. Section 17 empowers the Court of Divorce not only to make a decree for restitution of conjugal rights, but also to order the payment of alimony. Again, the provision in section 22, that the Court shall proceed in conformity with the principles and rules of the Ecclesiastical Courts, is made subject to the provisions contained in the Act, and in the rules and orders to be made thereunder.

[THE PRESIDENT.—There is nothing restricting the powers of the Court in suits for restitution of conjugal rights.]

No; but it is submitted that the Court will not now grant an attachment for disobedience to a decree for restitution of conjugal rights, since the wife has an alternative remedy by obtaining alimony.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on November 27).—This is a suit by a wife for restitution of conjugal rights. The husband originally pleaded a defence which was subsequently withdrawn, and he submitted to a decree in the usual form, that he should "take the petitioner home and receive her as his wife, and render her conjugal rights." The petitioner now prays for an attachment against the respondent for disobedience of this order of the Court. The respondent alleges that he is not in contempt, inasmuch as he has complied with the decree, or shewn his readiness to do so.

What has in fact been done appears from an affidavit by the respondent, in which he says, "On the 3rd of November, I addressed to the petitioner a letter, of which the following is a copy:—'3rd November, 1883. I judge from your affidavit, of which I have been informed, that you expected some answer to your letter of the 8th of October. I can only repeat what I wrote in July of last year, that, as we have now been living apart

(1) 2 Add. Ec Rep 382.
(2) 20 & 21 Vict. c. 85.

for many years, it must surely be possible to come to some agreement to continue to do so, as our living together again could only entail certain misery on both of us. The fact of your serving me with a writ in an action of libel at the same time that you served me with the decree of the Court would of itself shew this. I am quite willing, as I have always been, to settle a proper allowance upon you, when you might continue to pursue your own objects in life unfettered by me, which you never could do if we lived together.—W. H. Weldon.' Since the petitioner's application to the Court on the 6th of November, I have taken a furnished house as a residence for the petitioner, Acton House, Acton, in the county of Middlesex, at a rental of 20*l.* for the first month, and reduced terms if the house meets with approval, and servants have also been provided for her, and I have given her notice thereof in a letter, of which the following is a copy:—'12th November, 1883. I have, since your application to the Court on the 6th instant, taken a furnished house for your residence, namely, Acton House, Acton, Middlesex, and engaged two servants. I will pay the rent so long as the house is occupied, and also continue your present allowance of 500*l.* per annum, which shall be paid monthly as heretofore. If you would prefer to live in any other neighbourhood, I am willing to make what arrangement I can to meet your wishes.—W. H. Weldon.' I am ready and willing to continue the allowance of 500*l.* a year made by me to the petitioner, or to make such other allowance as the Court shall consider just and proper."

The petitioner insists that the respondent is required by the decree, not merely to provide her with a house, servants, and allowance, but to live under the same roof with her. This is the question which I am called upon to decide.

The jurisdiction under which the Court acts in such cases as the present is conferred by the Divorce Act, 1857 (2), by the 17th section of which it is enacted that "application for restitution of conjugal rights may be made by either husband or wife by petition to the Court; and the Court, on being satisfied of the truth of the allegations therein contained, and that there is no legal ground why the same should not be granted, may decree such restitution of conjugal rights, and, where the application is by the wife, may make any order for alimony which shall be deemed just." By the 22nd section it is enacted that "in all suits and proceedings, other than proceedings to dissolve any marriage, the Court shall proceed to act and give relief, on principles and rules which in the opinion of the Court shall be, as nearly as may be, conformable to the principles and rules on which the Ecclesiastical Courts have heretofore acted and given relief, but subject to the provisions herein contained, and to the rules and orders under this Act." The question, therefore, arises, what were the principles and rules applicable to this case on which the Ecclesiastical Courts exercised this jurisdiction.

The principle derived from the common law on which the Ecclesiastical Courts proceeded was this, that it is the duty of married persons to live together, and that this duty should be enforced by the Court, unless it could be shewn that the complaining party had been guilty of some matrimonial offence for which a judgment authorising their living apart might have been obtained by the other. Authority for this proposition is not needed, but I may quote the statement of Blackstone, that "the suit for restitution of conjugal rights is brought whenever either the husband or the wife is guilty of the injury of subtraction, or lives separate from the other, without sufficient reason, in which case they will be compelled to come together again, if either party be weak enough to desire it, contrary to the inclination of the other." The mode in which the decree of the Court was enforced was by imprisonment until obedience was enforced. *Barlee* v. *Barlee* (3) and *Lakin* v. *Lakin* (4) are instances, the one of a husband, the other of a wife, being imprisoned for long periods for not obeying the order of the Court. In *Barlee* v. *Barlee* (3) Sir John Nicholl fully explains the function and duty of the Court in such cases:—"A notion prevails that a contempt must be

(3) 1 Add. Ec. Rep. 305.
(4) 1 Spinks, 274.

some disrespect to the Court, and that the imprisonment is in the discretion, and terminable at the pleasure, of the Judge. This is very erroneous. Contempts are usually incurred by a party's neglect or refusal to do some act which is in justice due to the other party in the cause, such as the giving in of answers, the payment of costs, or the like, and the imprisonment which follows is at the prayer of the other party, a prayer to which he cannot refuse to accede without a breach of its duty and a denial of justice. By the law of this country married persons are bound to live together, and if either withdraws without lawful cause, the other may, by writ in the Ecclesiastical Court, compel the party withdrawing to return to cohabitation." Although Sir J. Nicholl expressed sincere commiseration for the "unhappy woman," he refused to release her after nearly two years' imprisonment unless she promised to return to her husband. In *Lakin* v. *Lakin* (4), after three years' incarceration, the husband was released, upon shewing that he had a good defence which he had neglected to plead. In *Scott* v. *Scott* (5) Lord Penzance held that he had no discretion to enquire into the motives of the petitioner in bringing the suit, but must grant a decree, unless the petitioner had been guilty of an offence which would have been ground for a judicial separation; and in *Alexander* v. *Alexander and Amos* (6), Sir Cresswell Cresswell granted an attachment to enforce a decree of restitution. It follows from these decisions that I am bound to allow the attachment asked for.

My attention was directed by counsel to the law of Scotland upon this point. By that law a decree of adherence, the equivalent of our restitution of conjugal rights, may be obtained, but it cannot be enforced by imprisonment; it may, however, be followed by a decree for suitable alimony. I do not hesitate to say that the Scotch law on this subject appears to me much to be preferred to our own. Our Ecclesiastical Courts did not attempt to do, and could not do, more than compel an unwilling husband to allow his wife to live under the same roof with him. The only real advantage, therefore, which a wife can obtain from a decree of restitution is this, that a suitable dwelling and maintenance may be provided for her, and this could be secured by compelling the husband to allow her proper alimony, without requiring her to live with him against his will. Still, though I regret that the English law on this subject should differ from the law of Scotland—and, I believe, of most other countries—I am of course bound to administer it as I understand it to be; and I can find nothing in either of the Matrimonial Causes Acts, or in the decisions of my predecessors, which would justify me in refusing to enforce by attachment a decree for restitution of conjugal rights. It was suggested by Mr. Inderwick that the power given to the Court by the 17th section of the Matrimonial Causes Act, 1857, where the application is made by the wife, to make any order for alimony which shall be deemed just, contemplates the substitution of an order for alimony for a decree of restitution; but I am clearly of opinion that this power is given in addition to, and not by way of substitution for, that of decreeing restitution, which is left to be governed by the principles which were acted upon in the Ecclesiastical Courts.

For these reasons I feel constrained to allow the attachment asked for to be drawn up, but it may remain in the office for a fortnight from this day, and is not to be issued then if the respondent in the mean time complies with the order of the Court. The petitioner is entitled to the costs of this motion.

Solicitors—J. Neal, for the respondent.

(5) 4 Sw. & Tr. 113; 34 Law J. Rep. P., M. & A. 23.

(6) 2 Sw. & Tr. 385; 30 Law J. Rep. P., M. & A., 173.

ADMIRALTY.
1884.
Jan. 11,
12, 22.

THE CAMELLIA.

Salvage—Services interrupted.

Services which contribute to the ultimate safety of a vessel in distress, if interrupted before completion without default of the salvors, are entitled to some remuneration, not only where a vessel has been saved from a position of imminent peril, but also in a case where the vessel is brought into a position of greater comparative safety than that in which she was when she asked for assistance.

This was an action for salvage services rendered to the steamship *Camellia* by the steamship *Victoria*. The material facts are set out in the judgment, but it should be stated that the *Camellia* after she was left by the *Victoria* continued her voyage under sail, by which means she arrived, on the 5th of July, within 120 miles of Queenstown, having sailed between 300 and 400 miles. She was then picked up by a steam-tug and towed into port.

Cohen, Q.C., and *French*, for the salvors, cited *The Melpomene* (1) and *The Undaunted* (2).

Phillimore and *W. R. Kennedy*, for the defendants, cited *The Edward Hawkins* (3), *The EU* (4), *The Killeena* (5), *The Nellie* (6) and *The Yan Yean* (7).

Cohen, Q.C., in reply.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on Jan. 22).—The material facts of this case are as follows:—The *Camellia*, an iron screw steamship of 880 tons register, rigged as a two-masted schooner, with a crew of twenty all told, left Baltimore on the 11th of June, 1883, on a voyage to Londonderry. The value of the ship cargo and freight was 23,419*l*. On the 25th of June the tail end of her propeller shaft broke, and the propeller became useless. The *Camellia* proceeded under canvas until the 30th of June, by which time she had sailed 126 miles to the eastward, and had reached lat. 49° 29″ N., long. 21° 20″ W., when she fell in with the *Victoria*. The *Victoria* was a steamship of 3,989 tons gross and 2,449 tons net register, with engines of 400 horse-power, and a crew of fifty-four all told, on a voyage from Boston to Liverpool. She had on board a cargo of 616 cattle, 2,752 sheep, besides dead meat and a general cargo of American produce. The value of the ship was 35,000*l*., of the cargo 41,536*l*., and freight 4,692*l*.

The *Camellia* was flying signals of distress, and requested to be taken in tow. The first question in dispute is, as to the condition of the *Camellia* at this time. For the *Victoria*, it is alleged that the wind was west, and that the *Camellia* was lying nearly head to wind, quite out of her course, and that her master was vainly trying to pay her head off to the eastward. For the *Camellia*, it is denied that she was lying nearly head to wind, or that her master was vainly trying to pay her head off to the eastward; and it is alleged that she was heading north, a position into which she had been voluntarily placed, by putting her helm to starboard and backing her yards, when the *Victoria* was seen. She had just split her foresail, and another was about to be bent. On this point, I am of opinion that the contention of the *Camellia* is well-founded, and that there was nothing to have prevented her paying off to the eastward again without the assistance of the *Victoria*.

The *Victoria* took the *Camellia* in tow at about 8.10 p.m. on the 30th, and continued towing her until 7.45 the next morning, when the hawser broke. The *Camellia* signalled to the *Victoria* to take her in tow again; but the latter, in consequence of the risk there would have been of damage to the cattle and sheep in turning round to connect the vessels, and seeing that the *Camellia* was able to proceed on her course under sail, left her, signalling that she would report her.

(1) 42 Law J. Rep. Adm. 45; Law Rep. 4 Ad. & E. 129.
(2) Lush. 90.
(3) Lush. 515.
(4) 1 Spinks, 63.
(5) 51 Law J. Rep. P., D. & A. 11; Law Rep. 6 P. D. 193.
(6) 2 Asp. M.L.C. 142.
(7) 52 Law J. Rep. P., D. & A. 67; Law Rep. 8 P. D. 147.

In these circumstances, it is contended, on behalf of the *Camellia*, that the *Victoria* rendered her no salvage services, and that she improperly abandoned the attempt to salve, and therefore that the suit should be dismissed. I am of opinion, however, that salvage services to some extent were rendered. It is obvious that a steamer whose propeller is disabled, though she may have sailing power, is subject to greater risks than she is in ordinary circumstances expected to encounter. She is exposed for a longer time to the dangers of bad weather; she is not able to bear up against unfavourable winds with the same facility as a vessel constructed for navigation with sails alone. She is liable, therefore, to be driven out of her course if a change of wind should occur, and it becomes of great importance to her that the time and distance during which she may be exposed to these dangers should be shortened as much as possible.

In the present case, the *Camellia* was towed on her course a distance of eighty-five miles; but, what is of more importance, she was hastened on her voyage about seventy hours, as up to her being taken in tow she was sailing only at the rate of one mile an hour. She was also brought from ten to fourteen miles to the north, and so to that extent nearer to her proper track, from which she had been carried about thirty miles. I am advised that there was nothing in the weather during the towage which would indicate any difficulty or danger in the course of the service. But it is contended that the *Victoria*, by abandoning the *Camellia*, has forfeited all right to claim for salvage services. I find as a fact that the *Victoria* did not leave the *Camellia* because she was unable to see that she was signalling to be again taken in tow; but because, from the nature of the cargo, she would have run a considerable risk of loss or damage to it by turning round to windward to connect the two vessels; and I am advised that this was a reasonable apprehension. I am also advised that though the weather was worse when the towing ceased than when it commenced, there was nothing in it which made it unreasonable, on the part of the master of the *Victoria*, to consider that the *Camellia* could proceed on her voyage under sail without any other than that general risk which I have referred to as attending any steamer which has lost her steam-power. I am advised, and I think, that there was no misconduct on the part of the master of the *Victoria*; and that, balancing the risk to the animals which were committed to his charge with that to which the *Camellia* was still exposed, he did not act improperly in going on when the hawser broke. Several cases were cited in support of the defendants' contention that the plaintiffs were entitled to nothing. There can be no doubt that services, however meritorious, which do not in any way contribute to the ultimate safety of the ship are not entitled to salvage reward. That was the case of *The Edward Hawkins* (3). The vessel taken in tow was, after the parting of the hawser, driven away by a gale towards a dangerous coast, from which she was saved by her own anchors. The towing in no way assisted her, and therefore no salvage was earned. On the other hand, in *The EU* (4) Dr. Lushington puts the case of a vessel in a disabled state being brought on its way, and then abandoned by the salvors in consequence of tempestuous weather or other circumstances, and afterwards being saved by other salvors; and he says that it is by no means to be laid down as clear law that the original salvors are not entitled to some reward. And in *The Killeena* (5) Sir R. Phillimore says: "Now there is no doubt that where a set of salvors have done some acts which tend to the ultimate salvage of a vessel, they are usually entitled to some remuneration"; and he then proceeds to consider the facts which he considered shewed that the alleged salvors had improperly abandoned the ship in danger.

In the case of *The Nellie* (6) Sir R. Phillimore held that where, in consequence of a *bona fide* mistake, towing was not resumed after the hawser had parted, yet, as beneficial services had been rendered, the salvors were entitled to be paid. And in *The Melpomene* (1), Sir R. Phillimore says: "There are no cases which stand in the way of my adopting as a principle this, which appears to me of considerable importance to the interests of

The Camellia, Adm.

commerce and navigation—namely, that where a vessel makes a signal of distress and another goes out with the *bona fide* intention of assisting that distress, and as far as she can does so, and some accident occurs which prevents her services being as effectual as she intended them to be, and no blame attaches to her, she ought not to go wholly unrewarded." In *The Yan Yean* (7) I was of opinion that the salvors had, by negligence, brought the salved vessel into as great peril as that from which they had rescued her, and therefore that no claim for salvage existed. I am of opinion that the principle laid down by Dr. Lushington and Sir Robert Phillimore in the cases I have referred to—namely, that services which have contributed to the ultimate safety of a vessel, if interrupted before completion without default of the salvors, are entitled to some remuneration—is applicable not only to the case of a vessel saved from imminent risk of wreck, but also to a case like the present, where the vessel is brought into a position of greater comparative safety than that in which she was when she asked for assistance.

I award the sum of 200*l.*

Solicitors—Walker, Son & Field, agents for Field & Weightman, Liverpool, for plaintiffs; Thomas Cooper & Co., for defendants.

ADMIRALTY. 1883. Nov. 13.

THE ISIS.

Pleading—Salvage—Statement of Claim—Rules of the Supreme Court, 1883, *rules* 5 *and* 7.

The forms of pleadings in the appendix to the new rules are given as indicating only the character of pleading it is desired to introduce, and are not to be slavishly adhered to where it is desirable that fuller information should be given.

In a salvage action in respect of services rendered to a derelict ship where the statement of claim followed the form given in Appendix C.,—

Held, *that the statement of claim was insufficient.*

In an action for salvage services rendered to the derelict ship *Isis*, the statement of claim, beyond stating that the *Isis* was a derelict, gave no further information than is contained in the Form No. 6, Appendix C, section 3, of the Rules of the Supreme Court, 1883.

Phillimore, for the defendants, moved, under Order XIX. rule 7, for a further and better statement of the nature of the plaintiffs' claim.—The statement of claim states that the *Isis* was derelict, but beyond that the defendants are in ignorance of any facts, and are unaware of what case the plaintiffs are going to make. If the defendants are not to know the facts until the trial, they will have to keep all their witnesses, and they will not be able to make any tender.

Aspinall, for the plaintiffs.—It seems to me necessary that further information should be given than is provided for by the forms; but Order XIX. rule 5, says that, where those forms are applicable and sufficient, any longer forms shall be deemed prolix.

[THE PRESIDENT.—You see they must be "sufficient."]

The proper course, I submit, is for a defendant who wants further information to apply for particulars.

[THE PRESIDENT.—The rules were intended to avoid these constant applications for particulars. Provision is made for the furnishing of particulars in the statement of claim. The rules specify that the forms are only to be followed where they are sufficient. They are not to be slavishly adhered to, but must be taken only as indicating the sort of pleading it is desired to introduce. You must try and give the material information in a succinct form.]

The reason why salvage pleadings have always been so long is that, if the defendant admitted the facts alleged in the statement of claim, the plaintiff was, by the practice of the Court, bound to go to trial on the admitted facts, and was not allowed to call witnesses.

THE PRESIDENT (SIR JAMES HANNEN).—I really must say that it appears to me probable that it will be found necessary to make use of a form of pleading, in

salvage actions, more nearly approaching the old form of statement of claim, than the example given in the appendix to these rules. The general object of these rules is to save expense; and I know, from my own experience, that the defendant, in these salvage suits, does frequently assent to the statements made in the statement of claim, and the case proceeds to trial upon that basis. It would certainly lead to a very great additional expense if the plaintiff were obliged to keep his witnesses, for the purpose of proving at the trial the facts which are summarised in the statement of claim; and the defendant were also obliged to keep his witnesses, for the purpose of meeting some possible state of facts, of which he would have had no information from the statement of claim. I am of opinion in this particular case that the statement of claim is not sufficient, and direct that it be amended. The costs will be costs in the cause.

Solicitors—Pritchard & Sons, agents for Wiltshire, Yarmouth, for plaintiffs; Thomas Cooper & Co., for defendants.

ADMIRALTY. 1883. Nov. 2.

THE SEATON.

Collision — Overtaking and Crossing Ships—Articles 16 *and* 20 *of the Regulations for Preventing Collisions at Sea.*

A steamship which is overtaking as well as crossing the course of another is bound to keep out of the way, under the provisions of article 20*; and article* 16 *does not apply.*

This was an action for damage brought by the owners of the steamship *Polcevera*, against the owners of the steamship *Seaton*, in respect of a collision which occurred on the 31st of January, 1883, in St. George's Channel. The ships were bound to Cardiff, and each was stated to have been steering a SW. by W. course. The *Polcevera* was originally astern of and on the starboard quarter of the *Seaton*, but, being a faster vessel, was overtaking her.

When the *Polcevera* had drawn up nearly abeam of the *Seaton*, and was from three to four miles distant from her, according to the plaintiffs' evidence, but considerably less according to that of the defendants, the course of the *Polcevera* was altered to S½W., thus intersecting the course of the *Seaton*. The collision subsequently occurred, the starboard bow of the *Seaton* striking the port side of the *Polcevera*.

Phillimore (*W. R. Kennedy* with him), for the *Polcevera*.—The ships were crossing within the meaning of article 16, and it was therefore the duty of the *Seaton*, having the *Polcevera* on her starboard side, to keep out of the way.

BUTT, J.—I must draw your attention to the wording of article 20 of the Regulations of 1880. The corresponding article 17 of the Regulations of 1863 seems to have left some doubt as to the relative duties of ships, where one of them is at the same time an overtaking and a crossing ship, and article 20 of the present regulations was passed to remove that doubt. [The learned Judge then read the two articles referred to (1).]

Phillimore.—No doubt the *Polcevera* was at one time an overtaking ship, but that condition of things had been determined, and they became crossing ships, and crossing ships only. He cited *The Franconia* (2), *The Peckforton Castle* (3) and *The Cayuga* (4).

Charles Hall, *Q.C.*, and *Bucknill*, for the *Seaton*, were not called upon.

BUTT, J.—This seems to me a very clear case. These vessels were first steering nearly

(1) Regulations for Preventing Collisions at Sea, 1863, article 17: "Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel."

Regulations of 1880, article 20: "Notwithstanding anything contained in any preceding article, every ship, whether a sailing-ship or a steamship, overtaking any other, shall keep out of the way of the overtaking ship."

(2) 46 Law J. Rep. P., D. & A. 71; Law Rep. 2 P. D. 8.

(3) 47 Law J. Rep. P., D. & A. 69; Law Rep. 3 P. D. 11.

(4) 14 Wallace, 270.

The Seaton, Adm.

the same courses, and if they had kept those courses there would probably have been no danger of collision. But a state of things occurred which altered this, and this was brought about by the manœuvre of the *Polcevera*. That is to say, instead of keeping her parallel course, she altered it more to the southwards, and thus got on one which intersected the course of the *Seaton*. She, in fact, starboarded sufficiently to bring about a collision. I do not see what can justify such a manœuvre. She says, however, that when the ships were approaching one another the *Seaton* was seen to be porting, and that this caused the collision. But though evidence has been given by those on board the *Polcevera* that the *Seaton* ported, it does not affect my judgment, for the evidence is clear that the position of imminent danger was caused by the starboarding of the *Polcevera*. I hold that the latter was an overtaking ship within the meaning of article 20, that she threw herself across the course of the *Seaton*, and that she is alone to blame for this collision.

Solicitors—Ingledew & Ince, agents for Ingledew, Ince & Vachell, Cardiff, for plaintiffs; Turnbull, Tilly & Mousir, for defendants.

PROBATE. 1883. Dec. 18. } HANKINSON AND ANOTHER *v.* BARNINGHAM AND OTHERS.

Practice—Particulars—Probate Action—Unsoundness of Mind.

The Court will not order the defendant in a probate action to give particulars of a plea that the deceased was not of sound mind.

The plaintiffs propounded, as executors, the will, bearing date the 28th of October, 1882, of William Barningham, of Pendleton, Lancashire, who died on the 3rd of November, 1882.

The defendants, who were the widow and the only daughter and child of the deceased, had filed a counter-claim, by which they alleged—first, that the will had not been duly executed; secondly, that the deceased was not of sound mind at the date of the execution of the alleged will; thirdly, that the defendants were the lawful relict and the only child of the deceased. The defendants prayed the Court to pronounce against the alleged will, and to declare that the deceased had died intestate.

William Barningham, the nephew of the deceased, had intervened in the suit, and joined with the plaintiffs in praying that the will should be admitted to probate.

An application was now made on behalf of the plaintiffs for an order directing the defendants to give particulars as to the plea of the testator's unsoundness of mind.

Russell, Q.C., and *C. A. Middleton*, for the plaintiffs.

Bayford, for the intervener, supported the application.

Searle, for the defendants, was stopped by the Court.

THE PRESIDENT (SIR JAMES HANNEN).—It has been admitted by the plaintiffs' counsel, and it is in accordance with the whole of my judicial experience, that it has never been the practice to order particulars of a plea of unsoundness of mind, and I do not feel myself at liberty to alter a practice which has been established for more than twenty-five years. The result of my experience is that it is unnecessary and undesirable, and that justice does not require, that the particulars asked for should be given, since they would lead to that prolixity of detail which it has been the policy of the law to discourage. It would involve the setting out of acts extending over many years, and it would also become necessary that those who allege the testator's soundness of mind should give the particulars upon which they rely. A plea which depends upon the whole life and conduct of a man cannot be made the subject of particulars; and I reject the application, with costs.

Solicitors—Smith & Eldridge, agents for R. Hankinson, Manchester, for plaintiffs; R. J. Jarvis, agent for Hutchinson & Lucas, Darlington, for defendants; Gregory, Rowcliffes & Co., agents for Addleshaw & Warburton, Manchester, for intervener.

[IN THE COURT OF APPEAL.]

ADMIRALTY.
1884.
Feb. 26, 27.

THE MARGARET.*

Collision between Steamships—Rules for the Navigation of the Thames, rule 23—*Meaning of "before rounding points."*

By rule 23 *of the Rules for the Navigation of the Thames, "steam vessels navigating against tide shall, before rounding" certain points, "ease their engines and wait until any other vessels rounding the point with the tide have passed clear":*—Held, *that the points mentioned in this rule begin where a vessel having to go round them would, if there were nothing in the way, be obliged to use her steerage for the purpose of continuing her course, and ends where that necessity ceases; and that the words "before rounding" in the rule mean the time when, if there were nothing in the way, a vessel would have to begin to use her steerage power in order to go round a point as defined by the rule.*

Held, *further, that by the rule the steamship navigating against the tide is bound to ease as much as she can having regard to her own safety.*

Appeal from the judgment of Butt, J.

The case is reported 52 Law J. Rep. P., D. & A. 65.

Action by the owners of the steamship *Clan Sinclair* against the owners of the steamship *Margaret* for damage by collision.

The *Clan Sinclair* left the South West India Dock and proceeded down the Thames against the tide. When off Blackwall Point she came into collision with the *Margaret*, which was coming up the river with the tide. The *Clan Sinclair* was about to round Blackwall Point under a port helm, when the *Margaret* was first seen over the land at Blackwall Point about a third of a mile off. The engines of the *Clan Sinclair* were then, as the Court of Appeal held, eased, but she could have gone slower. The *Margaret* struck the starboard side of the *Clan Sinclair*.

The defence alleged, amongst other things, "that those on board the *Clan Sinclair* disobeyed rule 23 (1) of the Rules and By-laws for the Navigation of the River Thames."

Butt, J., held that no blame attached to the *Clan Sinclair*, and pronounced the *Margaret* solely to blame.

The owners of the *Margaret* appealed.

Hall, Q.C., and *Phillimore*, for the appellants.

Russell, Q.C., and *Myburgh, Q.C.*, for the respondents.

The Libra (2) was cited.

BRETT, M.R.—In this case two vessels have come into collision off that which is known as Blackwall Point; and the learned Judge, assisted by the Trinity Masters, in the Court below, has found that in respect of that collision the *Margaret* was solely to blame and the *Clan Sinclair* not at all to blame. It becomes necessary to consider what were the rules of navigation to which the two ships were bound to conform when navigating that part of the Thames which is known as Blackwall Point.

Now the navigation of vessels in that position off Blackwall Point, or with regard to Blackwall Point, is partly to be governed by what is called the 23rd rule of the By-laws for the Navigation of the River Thames; and the first matter to be considered is what is the meaning of the rule which says that "Steam vessels navigating against the tide shall, before rounding the following points,"—one of which is Blackwall Point—do certain things. It seems to me the first thing to consider is what is the meaning of "the following points." It is clear that the word "point" does not mean a mathematical point;—this is a nautical rule, written therefore in nautical language, and it is written with regard to a winding river where there are what sailors call "points"—that is, where the land is going out from the straight line in the form of a promontory into the river, so that the river is obliged to wind round that point. Therefore the point is not a mathematical point at the end of that promontory, it is the whole of the

* *Coram* Brett, M.R.; Baggallay, L.J., and Lindley, L.J.

(1) Rule 23: "Steam vessels navigating against tide shall, before rounding the following points—namely, . . . Blackwall Point—ease their engines and wait until any other vessels rounding the point with the tide have passed clear."

(2) Law Rep. 6 P. D. 139.

promontory; and it seems to me the proper mode of defining the point within the rule is this: that the point begins where a vessel having to go round it, either up or down the river, would, if there were nothing in the way, be obliged to use her steerage for the purpose of continuing her course, and that it ends where the necessity, if there were nothing in the way, of using the steerage in order to go round ceases. Therefore the point is that which is contained within those limits. Then the rule says, "Steam vessels navigating against the tide shall, before rounding the following points," do certain things. Now the next question is, what is the meaning of "rounding"? It seems to me it again begins from the time when, if there were nothing in the way, a vessel would have to begin to use her steerage to go round, and that the rounding ends at the same place that I before stated, where, if there were nothing in the way, she would cease using her steerage for the purpose of going round, and would then be straight for her opposite course. That does not enable us to say, with regard to any point, that it begins at the diameter of a semicircle: it depends on the way in which the reaches up which they are to go, or down which they are to come, are angled towards the point. When the vessel is going against the tide, it seems to me "before rounding" does not mean only before she begins to round, but includes before she has finished to round the point, in the sense in which I have described the point. I do not say that this rule applies only before she begins to round the point, it applies during the whole time that she would have to be rounding the point. In the case of *The Libra* (2) the Court had to apply the rule to a vessel which was in the reach before she would have to begin rounding the point, and we then came to the conclusion that she ought to obey this rule so as to prevent herself meeting the other vessel or being in the same line with the other vessel, so far as going up or down the river is concerned, while they would both be "off the point," in its largest sense, and that she ought therefore, if she could do so, to stay in that part of the river, before beginning to round the point.

If, then, the vessel going against the tide ought not to see, or could not see, the other vessel till she herself is already on the point or off the point—that is, the vessel going against the tide—then we cannot say she must stop before she gets to the point: that cannot be the meaning of the rule. It was suggested that in the circumstances of the case the rule did not apply, and it was suggested it did not apply because in *The Libra* (2) we had said if the ship were not already up to the point she could not begin to turn round it. It does not seem to me that that is the effect of *The Libra* (2). The rule applies though the ship which is going against the tide is off the point—or, in nautical language, on the point—at the time when she sees the other ship. If she is not already on the point, or off the point, she ought, as far as is possible, not to go on the point till the other ship has come round it and is clear of her. But if she is already off the point, it seems to me that she ought, considering the circumstances of the case, to remain as nearly as she can where she is with respect to the course up or down the river. I do not say she is bound to remain in mid-river or on one side, supposing her to be in either of those positions, but she is bound not to go further than she can help on a course which would, if she went on, take her further round the point.

If that be so, then, in order to obey this 23rd rule in the circumstances of this case, the *Clan Sinclair* ought not to have gone lower down the river than she was when she ought first to have seen the *Margaret*, or to have proceeded further on her course than it was necessary she should go, if she eased so much only as to enable herself to be safe both with regard to herself and the general navigation. I do not think she was bound to stop herself so as to lose all command over herself and thus become a danger to herself and the general navigation. The rule does not say she is to stop, it says she is to ease: the question is, how much is she to ease? She is to ease, being in that position, so much as to prevent herself, as far as she can with safety, from going further down the river If she had eased, as the learned Judge and the Trinity Masters found in the Court

below, or if she did ease as much as she could having regard to her own safety, I should think she had obeyed the rule. This is a very strict reading of the rule, but otherwise not; but, as I understand this rule, we ought to read it strictly, in order, if possible, to prevent collisions off these points, which are very dangerous points for navigation in this river. We ought to read the rules strictly, and that is a very strict reading.

Now, reading that rule in that way, the next thing is to see whether the rule replaces other rules. I think that, in the circumstances of this case, as I said in *The Libra* (2), it does not. If the circumstances are such that any of the other rules apply, those rules apply off these points or on these points just as much if the vessels were anywhere else; but the question will always be whether the circumstances are such that they do apply, and if the ship is brought as near as she can with safety to herself to a standstill, it will be found at all events very difficult, as far as she is concerned, for her to break any of the other rules.

[His Lordship then said that the Court and the assessors considered that there was evidence that the *Clan Sinclair* did more than keep her engines moving so as to keep command of her, and that she could have gone slower, and therefore that although the *Margaret* was much more to blame, still the *Clan Sinclair* was in fault, and concluded as follows:]

Both ships were therefore to blame, and the damages must be calculated on that basis. The appeal must be allowed, but without costs either in this Court or in the Court below.

BAGGALLAY, L.J.—I am of the same opinion. The *Clan Sinclair* disobeyed rule 23. That rule is not very clear, and there might be a doubt as to the meaning of the word "point." The Master of the Rolls has given what seems to me a good general definition, and I agree with it, and am of opinion that the "point" within the rule begins at the place where it is necessary that a vessel should begin to use her steerage for getting from one reach into the other, and ends where she ceases so to use her steerage and continues her ordinary course. I think, also, that the words "before rounding" may of necessity have a different interpretation according to the circumstances of each case; but the "rounding" begins, I think, where the "point" begins, and ends where, according to the explanation already given, the "point" ends. I agree that this appeal must be allowed.

LINDLEY, L.J., concurred.

Appeal allowed.

Solicitors—Freshfields & Williams, for appellants; Hollams, Son & Coward, for respondents.

ADMIRALTY. 1883. Dec. 20.

THE IMMACOLATA CONCEZIONE.

Priority of Liens—Wages—Shipwrights—Costs.

Several actions were brought by different plaintiffs against a foreign ship, which was sold at the instance of one of the plaintiffs and the proceeds brought into Court: —Held, *that the plaintiff, at whose instance the proceeds were so made available for the other claimants, was entitled to be paid his costs out of the fund in Court, up to and inclusive of the sale of the ship, in priority to other claimants.* Held *also, that the lien of seamen takes priority over the common law possessory lien of a shipwright, for wages earned before the shipwright's lien attached; for subsistence money from the date of leaving the service of the ship till the return home of the seamen; and for the cost of their passage home.*

Special Case stated by the Registrar with the consent of the parties.

Several actions had been brought against the foreign ship *Immacolata Concezione*, which had been sold by the order of the Court in the action of Walker & Co., and the proceeds of the sale (2,328*l.* 6*s.* 7*d.*) brought into Court. This sum being insufficient to satisfy all the claims against it, the Registrar stated a Case for the opinion of the Court on the question of the

order in which the several claimants were to rank.

The Special Case, so far as is material, was as follows :—

1. The *Immacolata Concezione* is a foreign steamship, and one of which no owner or part owner was at the time of the dates hereinafter mentioned domiciled in England or Wales.

2. On the 15th of September, 1882, Edmund Walker and others instituted a suit against the steamship in the City of London Court, to recover the sum of 105*l.* for necessaries supplied to the said steamship. At the time of such supply and of the institution of such suit the said vessel was in the graving-dock of Alfred Carter, as hereinafter mentioned, and within the jurisdiction of the said Court. The said steamship was arrested in the said dock on the 15th of September, 1882, by the bailiff of the said Court, and on the 20th of September, 1882, M. Gaillard entered an appearance in the said suit as owner of the said steamship. The suit came on for trial in the City of London Court on the 11th of October, 1882, and it was then adjudged that the plaintiffs do recover against the said M. Gaillard and the said steamship the sum of 105*l.*, together with the costs of action. On the 27th of October, 1882, a warrant of execution was issued on the said judgment, and on the 27th of October, 1882, the bailiff of the said Court seized the said steamship under the execution. The plaintiffs paid fees to the high bailiff of the City of London Court for such arrest and execution of judgment, amounting to 16*l.* 7*s.*

3. By an order of this Division of the High Court of Justice, made on the 3rd of November, 1882, the bailiff of the City of London Court being still in possession of the said steamship under the said execution, the said suit was transferred as 1882. No. 2571. fol. 380, to the High Court of Justice, without prejudice to the rights of priority, if any, possessed by the said plaintiffs.

4. On the 31st of March, 1882, the steamship being then in the port of London, and in need of repairs to hull and engines, was placed in the dry dock of the plaintiff Alfred Carter, by the desire of M. Gaillard, the managing director of the company to which the said ship belongs, for the purpose of such repairs, it being arranged with the said M. Gaillard that Seaward & Co. should execute the engineering and iron work, and the said Alfred Carter the shipwrights' and wood work; and after the said steamship was put into the said dry dock, work was done upon her in the dock by Seaward & Co. and the said Alfred Carter as hereinafter stated.

5. On the 18th of September, 1882, the plaintiffs Seaward & Co. instituted an action—1882. S. No. 4198. fol. 327—in this Division of the High Court of Justice, against the owners of the said vessel, claiming for certain equipment, repairs and necessaries made and supplied to the said vessel in and subsequent to the month of April, 1882, to the alleged amount of 2,510*l.* 4*s.* 3*d.*, with interest from the 1st of August, 1882, and costs. At the time of the making and supply of such equipments, repairs and necessaries, and at the time of the institution of the said action, the said vessel was in the graving-dock of Alfred Carter. The said plaintiffs arrested the vessel on the 18th of September, 1882, while still in the said graving-dock, by a warrant of this Court, and she remained under arrest of this Court till the date of her sale by the Court as hereinafter stated. On the 19th of December, 1882, the said plaintiffs obtained judgment in this action, subject to a reference as to the amount to the Registrar and merchants, together with costs; and the Judge of this Division condemned the said vessel in the amount due in respect of such claim, but without prejudice to other claims against the said vessel.

6. On the 21st of September, 1882, the plaintiff Alfred Carter instituted an action in this Division—1882. C. No. 4674. fol. 331—against the owners of the said vessel, to recover the sum of 1,570*l.* 10*s.* 3*d.*, in respect of certain necessaries, alterations and repairs supplied made and done by him to the said vessel in the months of April, May and June, 1882. The said plaintiff also claimed 696*l.* for dock rent from the 1st of April till the date of his bringing his action, and a further sum for dock rent from that time forward till judg-

ment or removal of the said vessel. On the 21st of September the vessel was arrested in this action.

7. The said plaintiff Alfred Carter is a shipwright, and is the owner of a graving-dock at Millwall, in the county of Middlesex; and the said vessel was placed in his dock, as stated in paragraph 4, on the 1st of April, 1882, when his work on her began, to the 24th of June, when work on the vessel was discontinued, and thenceforward to the date next hereinafter mentioned. On or about the 26th of September, the said vessel, which was then in possession of the marshal under the warrants dated the 18th and 21st of September, 1882, and was also in the custody of the bailiff of the City of London Court under the warrant from that Court, was, by the order of the 25th of September, 1882, removed by the marshal from the plaintiff's dock into Millwall dock. Such order was expressed to be made without prejudice to the possessory lien of the said plaintiff Alfred Carter on the said vessel. The expenses of such removal were paid by the marshal, and have been deducted by him from the proceeds of the sale. On the 19th of December, 1882, the said plaintiff obtained judgment in favour of his claim, subject to a reference as to the amount to the Registrar and merchants, together with costs; and the Judge condemned the said vessel in the amount due in respect of the said claim and costs, but without prejudice to other claims against the said vessel.

8. On the 31st of October, 1882, the plaintiffs Corbriere and others, the officers and crew of the said vessel, instituted an action—1882. C. No. 5089. fol. 391—in this Division, claiming, for wages and disbursements and passage home, a total sum of 473*l.* 11*s.* 5*d.*; also a further claim to have their wages and disbursements allowed them from the date of the writ until payment of the principal sum claimed, together with any further sum found to be due. The dates during which the said master stated his wages to have been earned, and his disbursements to have been made, were from the 27th of May to the 9th of October, 1882, that is, during the time that the said vessel was in the dry dock of the plaintiff Alfred Carter, or during her subsequent custody by the Court. As regards the seamen, two of the said plaintiffs began their service on the 22nd of February, and the remainder on the 27th of March, 1882; all the said seamen, save one, who was paid off in September, stated that their services lasted till the 9th of October. The said plaintiffs on the 30th of January, 1883, obtained judgment, the said Judge pronouncing in favour of their claim, subject to a reference to the Registrar and merchants, together with costs, and condemning the said vessel in the amount due in respect of their said claim, but without prejudice to other claims against the said vessel.

9. On the 12th of March, 1883, the plaintiffs Robertson & Co. instituted an action in this Division—1883. R. No. 603. fol. 132—against the owner of the said vessel for necessaries supplied to the said vessel in the months of May and June, 1882, to the amount of 39*l.* 6*s.*; and on the 19th of March, 1883, they served the writ on the Assistant Registrar, the proceeds of the sale of the said vessel being then in Court, but they have not proceeded further therein.

14. It is admitted by all the parties to this Special Case, that, subject to the rights of the plaintiffs in the suit instituted in the City of London Court, under their execution, the seamen are entitled to their wages earned up to the 2nd of April, 1882, in priority to the other claims, but no further.

The questions for the decision of the Court are:—

First. In what order the several claims of the several plaintiffs are to be paid out of the fund in Court.

Secondly. In what order the costs of the plaintiffs in the said several actions are to be paid.

Thirdly. How the costs of and incidental to this Special Case are to be borne.

Gainsford Bruce, for Walker & Co.—My clients, being *priores petentes*, are entitled to be paid in priority to the other claimants—at least, they are entitled to their costs in priority to the other plaintiffs, as it is owing to their instrumentality that the fund is in Court.

Phillimore, for Alfred Carter.

The Immacolata Concezione, Adm.

Bucknill (*A. E. Nelson* with him), for Seaward & Co.—It was agreed between Carter and Seaward & Co. that the latter should have the same rights as Carter.

Roscoe, for the master and seamen.—*The Gustaf* (1) is an authority which shews that the seamen, having a maritime lien, have priority over all other claimants, even over Carter's common law possessory lien, for their wages earned before the ship went into dock, and for their passage home. It has always been the practice to give sailors subsistence money. He also cited *The Carolina* (2) and *The Constancia* (3).

L. E. Pyke, for Robertson & Co., contended that Robertson & Co. had a possessory lien on certain sails. This fact was omitted in the Case by mistake; but the Court has power to amend—Order XXVIII. rule 12.

[BUTT, J.—This must be ascertained by the Registrar, and if it proves to be the fact, the Case must be amended.]

BUTT, J.—In this case all these claims must be referred to the Registrar and merchants to settle the amount which may be due in respect of them. I have therefore only to deal with the order in which these several claims will rank against the fund in Court. This fund was practically placed in Court so as to be available for the several claimants by Walker & Co., the plaintiffs in the action in the City of London Court. I therefore consider that they are entitled to the costs of their action, up to and inclusive of the sale of the ship, in priority to the other claimants. But as they chose to keep the bailiff of the City of London Court in possession, as well as the marshal of this Court, the expenses thus incurred cannot be paid out of the fund in Court.

I will next consider Carter's possessory lien. But for *The Gustaf* (1), I should not feel quite clear that his claim had not priority over a maritime lien; but by that decision of Dr. Lushington I am bound. I shall therefore give priority to Carter over all the other claimants, except the mariners, so far as regards the claim of the latter for wages up to the 2nd of April; and priority to the claim of Seaward & Co., as to which I shall speak later. *The Gustaf* (1) is a clear decision to the effect that the claim of the mariners has priority over the shipwright's common law possessory lien up to the time of the beginning of such lien; and therefore, as I said, up to the 2nd of April the seamen's wages must have priority over the other claims. With regard to the rest of the wages claim, it will rank after Carter's, and also after that of Seaward & Co., if on reference to the Registrar it is shewn that the latter are by arrangement entitled to rank equally with Carter. As regards the claim for subsistence, I am of opinion that the seamen can only claim for this in respect of the period between leaving the service of the ship and returning home. This, and the sum which may have been paid for the seamen's return home, the amount of which must be ascertained, must rank with the wages earned before the 2nd of April. As regards Robertson & Co., the sailmakers: if they had the sails in their possession and were deprived of them by the marshal, their rights must be protected, and they must rank before Carter and Seaward & Co.

As regards the costs of these claims: in each action the decree will include costs, and in each case also they must rank with the claim; and in the wages action they must rank with what I may term the best part of the claim, that is, for the wages due up to the 2nd of April.

I will now only add that Seaward & Co.'s claim must be referred back to the Registrar, and it must be found whether there was an arrangement, between Gaillard, Seaward & Co. and Carter, that Carter was to protect Seaward & Co.'s lien. If he was to do so, then the decree will be that Seaward & Co. are to rank with Carter; and if not, then they must be postponed to Carter.

Solicitors—Stocken & Jupp, for Emerson, Walker & Co.; T. Cooper & Co., for A. Carter; Lowless & Co., for Seaward & Co.; N. Argles, for the seamen; Plews, Irvine & Hodges, for G. Robertson & Co.

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(1) Lush. 506.
(2) 3 Asp. M.L.C. 141.
(3) 15 W. R. 183.

ADMIRALTY.
1884.
Feb. 1.

THE HARDWICK.

Practice — Salvage — Pleading — Statement of Claim—Evidence.

The statement of claim in salvage actions should contain such facts as, if admitted, will constitute the whole of the plaintiff's case, as the Court will decline to admit evidence at the hearing, except on special grounds, where the facts alleged in the statement of claim are admitted.

Action for salvage by the owners, master and crew of the steam trawler *Flying Sprite* against the owners of the steamship *Hardwick*. The statement of claim set out the circumstances in which the services were rendered, and also contained statements as to the respective values of the *Hardwick* and the *Flying Sprite*, and the amount claimed by the latter in respect of loss of fishing.

The defendants put the plaintiffs to proof of the values and the amount claimed in respect of loss of fishing; but admitted all the other facts alleged in the statement of claim.

Charles Hall, Q.C. (*Bucknill* with him), for the plaintiffs, tendered evidence as to the nature of the place to which it was alleged the *Hardwick* had been taken by the salvors, submitting that the Court had a discretion to admit evidence, although the facts as alleged were admitted.

Phillimore (*F. W. Raikes* with him), for the defendants, objected.

THE PRESIDENT (SIR JAMES HANNEN).—The suggestion that I have a discretion as to admitting evidence in such a case as this coincides with my own opinion, that if anything material to the decision of the case were omitted in the statement of claim, I might possibly admit evidence. I may here express my opinion that this and other cases which I have recently had before me shew the value of adhering to the old practice in regard to statements of claim in salvage actions; since expense is saved by the admission of facts, and by the Court giving its decision on such admitted facts.

But this useful practice of making admissions would be valueless, if, notwithstanding that the material facts are set out by the plaintiffs, and admitted by the defendants, evidence in addition were admitted. Because it would come to this, that neither the Court nor the defendant would be sure that all the facts were before them, or that the admissions were final. It must therefore be taken that such facts as are stated in a claim will, if admitted, constitute the whole of the plaintiff's case; and that evidence will only be admitted subject to the discretion of the Court, and on special grounds. I therefore exclude this evidence.

Solicitors—Rollit & Sons, agents for Rollit & Sons, Hull, for plaintiffs; Waltons, Bubb & Walton, for defendants.

[IN THE COURT OF APPEAL.]

PROBATE.
1883.
Dec. 12.

THE MARQUIS OF SALISBURY *v.* NUGENT.*

Practice—Will—Probate—Allegation of Undue Influence — Particulars — Order XIX. rules 6 and 7.

Where probate of a will is resisted on the ground of undue influence, it has been the practice of the Probate Court to order the names of the persons alleged to have exercised the undue influence to be disclosed, but to refuse further particulars.

Semble,—*This practice is not altered by the Rules of Court*, 1883, *Order XIX. rules 6 and 7.*

The action was brought to obtain probate of the will, dated in June, 1880, of Lord Greville, who died in January, 1883. Probate was resisted by the defendant, a son of the testator, upon the ground that the will of 1880 was obtained by the undue influence of the Marquise de la Bédoyère, a daughter of the testator,

* *Coram* Cotton, L.J.; Lindley, L.J., and Fry, L.J.

and other persons. The marquise, who was an intervener in the action, then amended her statement of claim, asking for the probate of the will of 1880, or, in the alternative, for the probate of a previous will made in 1877. On the 23rd of October, the defendant delivered an amended statement of defence to the intervener's amended statement of claim, alleging that both wills were obtained by the undue influence of the marquise and other persons. On an application by the intervener that particulars should be given of the other persons alleged to have exercised the undue influence, and of each of the acts of undue influence, and the times when and places where each of the said acts were alleged to have been committed, Sir James Hannen made an order for the disclosure of the names of the persons alleged to have exercised the undue influence, but declined to order any further particulars to be given.

The marquise now appealed.

Sir H. Giffard, Q.C. (*Bayford* with him), for the appellant.—As the statement of defence was delivered on the 23rd of October, probably the new rules (Order XIX. rules 6-9), which are express that particulars of undue influence must be given, do not apply. But that only affects the question of the form in which the particulars ought to be given. The general question is, whether full particulars of undue influence ought not to be given. Undue influence, to be successful, must amount either to coercion or fraud—*per* Lord Cranworth in *Boyse* v. *Rossborough* (1); and where coercion or fraud is alleged, it is common practice to require full particulars to be given.

Keogh, contra. — Sir James Hannen decided on the ground that it had always been the practice of the Probate Court to confine particulars to the names of the persons alleged to have exercised undue influence. Even if the case comes under the new rules, it is a question of how far the particulars are to extend, and the practice as to that is not altered. Any more extended order might lead to the fabrication of evidence. It has always been the practice in the Probate and Divorce Court to confine particulars in this way—*Graves* v. *Graves* (2).

Sir H. Giffard replied.

COTTON, L.J.—This is an appeal from the President of the Probate and Divorce Division declining to order the defendant, who opposes probate of Lord Greville's will on the ground that the execution of it was obtained by undue influence, to give further particulars of the undue influence relied upon. The names of the persons only who are alleged to have exercised the undue influence have been ordered to be given. I must say that, if we could do what is right, particulars ought not to be confined to that. In my opinion it would lead better to the decision of the rights of parties, and would save expense, if the attention of the opposite party were called more particularly to the facts to be proved, and he were not left to prepare evidence which perhaps may never be required. The divorce case referred to by Mr. Keogh has no bearing upon the matter. Here we do not know what the nature of the undue influence is. If we were making a rule, I for one would require a person who alleges undue influence to state it with great particularity. But it seems to me that both sides in this case agree that that has not been the practice of the Probate Court, and I do not feel at liberty now to interfere with that practice.

LINDLEY, L.J.—I am also of opinion that we ought not to reverse this decision. Not only is this practice well established, but it seems to me to have a great deal of good sense in it. Although it may be necessary for a defendant to bring his case up to fraud, yet the charge is a general one, as to which it is almost impossible to give particulars. Experienced Judges in probate matters have always refused to allow such particulars, and the inference, to my mind, is very strong that that is a good practice and works well.

FRY, L.J.—I am of the same opinion. I attach great weight to the practice which has been established for so many years.

(1) 6 H.L. Cas. 2, 48.

(2) 3 Curt. 235.

The question is merely one of the amount of particularity, and the Court has found that the disclosing of the names of the persons alleged to have exercised the undue influence is sufficient for the ends of justice. I am far from satisfied that this form of order is not the very best that could be adopted, and I am bound to say that I see great difficulties in adopting any other form of order. It must be extremely difficult to give particulars of special acts of undue influence. It would often involve the detailing of a whole family history. It seems to me that great prolixity would be the result of any other form of order, and that there would be constant application for further and better particulars.

Appeal dismissed.

Solicitors—Collyer-Bristow & Co., for appellant and for the intervener; E. Swain, for respondent.

ADMIRALTY. 1884. Feb. 22, 23.

THE HARTON.

Collision — Thames Rules — Merchant Shipping Act Amendment Act, 1873, *s.* 17.

A ship will not be held to blame, under the provisions of the 17*th section of the Merchant Shipping Act*, 1873, *for an infringement of one of the Thames Rules, where such infringement does not actually contribute to the collision.*

Action for damage by the owners of the barge *George and Jane*, against the owners of the steamship *Harton*. The barge was at anchor above Coal House Point in Gravesend Reach, and the *Harton* ran into her as she was coming up the river. The case of the *Harton* was that the barge had no anchor light, and that when she was seen the helm of the *Harton* was put hard-a-port and her engines were stopped, but no order was given to reverse.

Bucknill, for the owners of the *George and Jane*.

Phillimore, for the owners of the *Harton*.

BUTT, J. [after dealing with the evidence as to the light of the *George and Jane*, and finding that her light was not duly exhibited, proceeded as follows:]—The barge, therefore, being to blame, the next question that arises is whether I am to hold the *Harton* also to blame for not reversing her engines as well as stopping them, in obedience to rule 14 of the Thames Rules (1). The evidence of the *Harton* is, that it was not possible to see a vessel without lights on that night at greater distance than one ship's length. Probably the truth is, the barge might have been seen from one to two lengths off. Ought the master of the *Harton* in these circumstances to have reversed his engines? There is some difference of opinion between myself and the elder brethren on this point. I confess I think he ought to have done so. However that may be, we agree in this, that if he had reversed his engines it would not have made the slightest difference in the result. That being so, am I bound to condemn the owners of the *Harton* because their captain did not reverse his engines? I do not think I am. I am not coerced by any statutory provision to draw an inference that a vessel is to blame when she disobeys any particular rule. This is not the case of an infringement of the Regulations for Preventing Collisions at Sea, which are made under the provisions of the Merchant Shipping Acts. These Thames Rules are made under an entirely different Act of Parliament, and do not fall within the operation of the 17th section of the Merchant Shipping Act of 1873 (2). Therefore I am not bound, nor have I the power, to apply that well-known section. On these grounds I decide that the

(1) Rules and by-laws for the navigation of the River Thames.—14: "Every steam vessel, when approaching another vessel so as to involve risk of collision, shall slacken her speed, and shall stop and reverse if necessary."

(2) Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85), s. 17:—"If in any case of collision, it is proved to the Court before which the case is tried, that any of the regulations for preventing collisions contained in or made under the Merchant Shipping Acts, 1854 to 1873, has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shewn to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary."

Harton cannot be held to blame for this collision, and I pronounce the *George and Jane* alone to blame.

Solicitors—Keene, Marsland & Bryden, for plaintiffs; Thomas Cooper & Co., for defendants.

[IN THE COURT OF APPEAL.]

PROBATE. 1884. Feb. 13.

BLOXAM *v.* FAVRE.*

Will—Alien—Foreign Domicil—Domicil of Origin English—Form of Will—Probate in England—Lord Kingsdown's Act (24 & 25 *Vict. c.* 114), *s.* 1; *Naturalisation Act*, 1870 (33 *Vict. c.* 14), *ss.* 2 *and* 10.

The object of the 2nd section of the Naturalisation Act, 1870, *was to put aliens on the same general footing with British subjects as to acquiring, holding and disposing of property in England; but it does not give an alien power to dispose of the property in a form not in accordance with the law of his place of domicil.*

A testatrix, whose domicil of origin was English, married a German subject and resided in Germany until her death in 1872; *she survived her husband, and made a will which was valid according to the requirements of English law but not according to German law*:—Held, *that the will could not be admitted to probate in England.*

Decision of the President of the Probate Division affirmed.

This was an appeal from a decision of the President of the Probate Division, reported 52 Law J. Rep. P., D. & A. 42; Law Rep. 8 P.D. 101, in which he held that a will made by a testatrix whose domicil of origin was English, but who had married a German and resided in Germany until the date of her death in 1872, which was not valid according to the requirements of German law, but was valid according to English law, could not be admitted to probate in England.

* *Coram* Earl Selborne, L.C.; Lord Coleridge, C.J., and Cotton, L.J.

Horace Davey, Q.C., and *Jeune*, for the appellants.—The question here depends mainly on the construction to be put on the Act of 1870 read in conjunction with Lord Kingsdown's Act. Now, in *Stanley* v. *Bernes* (1) it was decided that an English person domiciled in Portugal could not make a will except in accordance with the law of Portugal. That case was followed in *Bremer* v. *Freeman* (2). It was with a view to those decisions that the Act of 1861 was passed. That Act affected the law of domicil, but did not affect the law of naturalisation. It provided by section 1 that the will of a British subject (whatever his domicil) should be held to be well executed if made either according to the *lex loci*, *lex domicilii*, or the law in force in that part of Her Majesty's dominions where he had his domicil of origin. Under that Act the will of the testatrix would have undoubtedly been good. But the Naturalisation Act, 1870, s. 10, sub-s. 2, placed her in the position of a statutory alien. We submit, however, that by section 2 of the same Act she had a right of disposing of her property in the same manner as a British subject—that is, by will made according to English law. Lord Kingsdown's Act provided that the will of a British subject was not bound to be made according to the law of his place of domicil, and the power of disposition conferred on aliens by the Act of 1870 is to dispose in the same manner in all respects as natural-born British subjects: that must mean in the same form. These words are also used in the latter part of the 2nd section. The words are capable of the construction we put upon them, and *prima facie* include form, and we submit that there is no reason why that construction should be cut down; there is nothing contrary to international law or sound principle in it. To so construe them with regard to aliens is to confer a privilege upon them. It is to be observed that there is no mention whatever of domicil made in the 2nd section of the Act, and it does not touch on any obstacle in respect of disposition of property on account of the domicil of the owner of the property. The section speaks of "natural-born British subjects," while

(1) 3 Hag. Ec. 373.
(2) 10 Moore P.C. 306.

Lord Kingsdown's Act speaks of "British subject." This would seem to indicate that aliens were to have the same power of disposing of property as English-born subjects, and the testatrix would therefore have power to dispose of her property by will made according to English law.

Inderwick, *Q.C.*, and *A. Gordon* were only called on as to the form of the order.

THE LORD CHANCELLOR (EARL OF SELBORNE).—We do not see our way to alter the conclusion of the Court below. The case has been very ably argued by the learned counsel on behalf of the appellants; and I admit that some of the considerations which had occurred to me in support of the decision of the learned President of the Probate Division, and perhaps some parts of that decision, have been somewhat shaken by the arguments addressed to us in support of the appeal. The 2nd section of the Act of 1870 has been much relied upon, and it has been urged that under that section the testatrix had the same power of disposing of her property as a natural-born British subject. It has also been pointed out that domicil is not mentioned one way or the other in that section, and that, if there is any obstacle in the way of a disposition of property by an alien by reason of domicil, there is nothing in the express words of that section which touches it. But, fully allowing for that, the question remains whether in reality this statute ought to be construed as drawing in, independently of domicil, the particular statute law contained in Lord Kingsdown's Act as to the mode by which wills made by British subjects might be executed. The Naturalisation Act, 1870, takes no notice of domicil, and is different in that respect from Lord Kingsdown's Act, section 1 of which enacted that "Every will made out of the United Kingdom by a British subject, whatever may be the domicil of such person at the time of making the same or at the time of his or her death, shall as regards personal estate be held to be well executed for the purpose of being admitted to probate, if the same be made according to the forms required, either by the law of the place where the same was made, or the law of the place where the person was domiciled, or by the laws then in force in that part of Her Majesty's dominions where he had his domicil of origin." That section refers to the subject of domicil. Now, the fact that the Act of 1870 does not take any notice of domicil, and is independent of it, introduces an important difference between it and Lord Kingsdown's Act. In the last-mentioned Act notice is distinctly taken of the importance of the subject of domicil, and within the limits of that Act that importance is intended to be done away with. Another difference has been pointed out between the two Acts—namely, that Lord Kingsdown's Act speaks of a "British subject," while the Act of 1870 speaks of a "natural-born British subject"; but I am not sure there is much importance to be attached to that difference.

The provisions in Lord Kingsdown's Act as to the modes in which a will may be executed by a British subject are worthy of consideration. Three modes of execution of a will of a British subject were sanctioned by it—(first) if it be made according to the *lex loci*; (secondly) if it be made according to the *lex domicilii*; (thirdly) if it be made according to the law in force in that part of Her Majesty's dominions where he had his domicil of origin. It has been argued that, because a British subject who had his domicil of origin in some part of Her Majesty's dominions might execute his will according to the law in force in that part, therefore, the words "natural-born British subject" being used generally in the Act of 1870, it was intended to introduce the same privilege in case of an alien, who was to stand in the same position as a natural-born British subject. The differences which I have pointed out between the two Acts give force to the inference I should have drawn from the Act of 1870 standing alone. The preamble of that Act is as follows:—"Whereas it is expedient to amend the law relating to the legal condition of aliens and British subjects." There is nothing there to shew any intention to introduce in relation to the wills of aliens any new law not recognised by the law of this country, or by the law of the rest of Europe, or any part of the civilised world. The 2nd section of that Act provides that real and personal property may be taken, acquired, held and disposed of in the same

manner in all respects as by a natural-born British subject. Looking at the whole of the Act and to the preamble I think the just inference to be drawn is that the purpose of the Act was to remove the disability of aliens as to taking, acquiring, holding and disposing of real and personal property. And if we adopt, as I believe we all do, the view of the learned President of the Probate Division, that "the words 'disposed of . . . . in the same manner in all respects as by a natural-born British subject' do not include a disposition by will; but that, in determining what is the valid will of an alien, the general principles of law laid down by the Privy Council and House of Lords must still be applied," we shall give full effect to the words of the Act.

It has been argued that the words "disposed of in the same manner" as by a natural-born British subject must be read as "in the same form." But these words must be looked at with regard to the context in which they are found as well as with regard to the general principle of the Act. In my opinion they mean that an alien shall have as large a power of disposition of property as a natural-born British subject; but the fact that domicil is not mentioned in that section shews that it was not intended that the law of domicil should be interfered with when it goes to the substance of the disposition. I agree with the learned President that the words "in the same manner in all respects" can have no greater force in the first than in the second part of the section; and it would be a very startling result if, when a derivative title to property was to be traced through from or in succession to an alien, that title or succession might be established according to the same forms as in the case of a British subject, and that a marriage solemnised in a form valid by English or Scotch law, though invalid by the law of the alien's country, might form a link in the chain of title to property.

I am of opinion that the true interpretation of the two Acts is that Lord Kingsdown's Act applied to an actual British subject, and gave a peculiar advantage to him; but that the object of the Act of 1870 was not to communicate that special advantage to all aliens in the world with reference to property in England, but merely to put them on the same general footing with British subjects as to holding property, without giving them those special privileges which had been conferred upon British subjects.

LORD COLERIDGE, C.J.—I agree.

COTTON, L.J.—I am of the same opinion. The object of the Act of 1870 was to remove the disability under which aliens stood as to acquiring and holding property in England, and to enable them to acquire, hold and dispose of property; but it was not intended to give them the special privileges as to disposition by will which British subjects have under the Act of 1861.

Appeal dismissed; costs of appellants on appeal and in the Court below to be paid out of the estate.

Solicitors—Paterson, Snow & Bloxam, for appellants; G. E. Carpenter, for respondents.

ADMIRALTY. 1884. Feb. 28. } THE GEORGE GORDON.

Salvage—Exorbitant Claim—Bail—Costs.

Where the plaintiffs in a salvage action arrested the defendants' ship and required bail to be given for an exorbitant sum, the Court ordered the plaintiffs to pay all the costs incurred by the defendants in procuring bail.

Action for salvage by the owners, masters and crews of the steam-tugs *Fylde* and *Wyre* against the owners of the ship *George Gordon*.

The plaintiffs commenced the action for 3,000*l.*, and arrested the ship, requiring bail to be given in that amount. At the hearing of the action, the Court awarded the plaintiffs the sum of 450*l.*

Myburgh, *Q.C.*, and *F. W. Raikes*, for the defendants, asked that the plaintiffs be ordered to pay the costs incurred by

The George Gordon, Adm.

the defendants in procuring bail, the sum in which bail was required being exorbitant.

Phillimore and *Bucknill*, for the plaintiffs.—The plaintiffs' solicitors were not aware at the time bail was required what was the nature of the services, and it is always open to defendants to ask to have the bail reduced.

BUTT, J.—Parties should not arrest a ship for an exorbitant sum; and it is no excuse to say that the defendant did not, as it were, struggle to get free, or that the solicitors were ignorant of the facts of the case at the time of the arrest. I will never sanction such a course; and I therefore order that the plaintiffs pay all the costs and expenses to which the defendants have been put by finding bail in the action.

Solicitors—Gregory, Rowcliffes & Co., agents for Hill, Dickinson & Co., Liverpool, for plaintiffs; Waltons, Bubb & Walton, for defendants.

DIVORCE. 1884. March 18. PONSONBY *v.* PONSONBY.

Settlements—Variation of—Life Interest—Absolute Interest.

Upon a petition for variation of settlements, after a dissolution of marriage at the suit of the wife, the Court will not extinguish the interest of the husband, so as to give the wife an absolute interest in property in which at the date of the decree she had only a life interest.

In this case the petitioner had obtained a decree for dissolution of her marriage on the ground of her husband's cruelty and adultery.

The petitioner afterwards filed a petition for variation of settlements, and from the Registrar's report it appeared that, by a post-nuptial settlement executed in 1873, the respondent had assigned all his real and personal estate, with certain unimportant exceptions, to trustees, upon trust to raise 2,000*l.* for the benefit of himself for life, with remainder to his wife for life, and with an ultimate remainder to himself absolutely on failure of issue. The settlement contained a covenant by the respondent to pay the aforesaid sum of 2,000*l.*, and also to effect a policy of insurance upon his own life for 1,000*l.*; but the insurance was never effected, and the only property which had come into the hands of the trustees was a sum of 300*l.*, with accumulations amounting to 24*l.* 17*s.* 4*d.* Upon the death of the respondent's father the respondent would become entitled to a sum of 1,700*l.*, which would be available towards making up the 2,000*l.* which he had covenanted to pay to the trustees of the settlement. There was no issue of the marriage.

The only other property to which the respondent was entitled was a life interest in a sum of 2,500*l.*, but in consequence of charges created by him his annual income from this fund was reduced to 20*l.* a year. He had no other means of support, and the petitioner was dependent for support upon her relations and friends.

Searle, for the petitioner, moved for an order extinguishing the respondent's interest under the settlement, and for the payment to the petitioner, for her costs, of the 300*l.* with the accumulations, and also directing that the trustees should be empowered from time to time to apply any portion of the 1,700*l.* for her own use.

Middleton, for the respondent.

BUTT, J.—The object of the settlement was to make a provision for the wife during her life, but the order now asked for would give her the money absolutely and at once. I do not think that I ought to do this; nor ought I to make any order as to the 300*l.* and the accumulations, as this would, in effect, give the money to the husband by relieving him of the costs of the suit. I shall order that the petitioner receive the income of the trust fund so long as it does not exceed 1,000*l.*, and that the respondent retain the income of the rest of the fund.

Solicitors—Prideaux & Sons, agents for Richard Andrew, Modbury, Devon, for petitioner; Guscotte, Wadham & Daw, for respondent.

PROBATE. 1884. Feb. 19. } *In the goods of* EDWARD GRIFFITH.

Administration — Intestacy — Bastard dying unmarried in Cornwall—Grant to Solicitor of Duchy of Cornwall.

Where a person resident in the county of Cornwall died a bachelor, bastard and intestate, the Court made a grant of letters of administration of his estate and effects to the solicitor for the affairs of the duchy of Cornwall, for the use of His Royal Highness the Prince of Wales, but required the warrant to be amended, so as to set forth the grounds for the application.

The Rev. Edward Griffith, vicar of St. Keverne, in the county of Cornwall, died intestate on the 27th of August, 1883.

The deceased was a bastard, and had never been married.

On the 4th of December, 1883, His Royal Highness the Prince of Wales, by a royal warrant, directed Mr. Thornhill Bradford Heathcote, as solicitor for the affairs of the duchy of Cornwall, to apply for and obtain from this Division letters of administration of the estate and effects of the deceased for the use of His Royal Highness.

No notice of the application was given to the Queen's proctor.

Charles Hall, Q.C. (Attorney-General to the Prince of Wales), moved for a grant of administration to Thornhill Bradford Heathcote, for the use of the Prince of Wales. *The Solicitor of the Duchy of Cornwall* v. *Canning* (1) is an authority for the present application, although in that case notice was sent to the Queen's proctor, who consented to the grant being made, "but without prejudice to the rights of the Crown."

THE PRESIDENT (SIR JAMES HANNEN).—The warrant does not state the grounds upon which the application is made, as is the practice in the case of similar applications on behalf of the Crown; but I will allow these particulars to be stated by amending the warrant, without requiring the issue of a fresh warrant. I have considered the matter, and shall allow the grant to issue, securities being dispensed with.

(1) Law Rep. 5 P. D. 114.

Solicitor for the Duchy of Cornwall, T. B. Heathcote.

ADMIRALTY. 1884. Feb. 12, 14. } THE NEVER DESPAIR.

Practice—Cross Actions—Consolidation—Plaintiff in Consolidated Actions.

Where cross actions have been commenced and consolidated, the party who has first commenced proceedings will be made the plaintiff in the consolidated actions, even though the action first commenced has been brought in the County Court, and the second action has been instituted in the High Court, and the first action has been transferred to the High Court at the instance of the plaintiff in the County Court.

In a case of collision between the *Stork* and the *Never Despair*, the owners of the *Stork* commenced an action in the City of London Court against the owners of the *Never Despair*, and subsequently an action against the owners of the *Stork* was commenced in the High Court by the owners of the *Never Despair*. Upon a summons taken out by the owners of the *Stork*, an order was made in chambers transferring the County Court action to the High Court, consolidating the two actions, and making the owners of the *Never Despair* plaintiffs in the consolidated actions.

Phillimore (*E. J. Pollock* with him), for the owners of the *Stork*, now moved that so much of the order as made the owners of the *Never Despair* plaintiffs be reviewed, and the conduct of the consolidated actions given to the owners of the *Stork*, who had been first to commence proceedings.

Nelson, for the owners of the *Never Despair*, *contra*.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on Feb. 14).—There was a motion re-

cently before me in which, a suit of damage having been instituted in the City of London Court, and a suit afterwards instituted in this Court in respect of the same collision, the County Court suit having been transferred to this Court, and the two suits having been consolidated at the instance of the plaintiffs in the transferred suit, the question arose whether the conduct of the consolidated suits should be given to the plaintiffs in the suit which had been commenced in the City of London Court, or to the plaintiff in the suit originally commenced here.

When this question first came before me in chambers I acted upon the view that the plaintiff who had commenced his suit in the City of London Court, having been the party who took the step by which that suit was transferred to this Court, must accept the position of affairs as he found them at the time when his suit was brought into this Court; and that consequently the suit which was already in this Court when the order for transfer was made must be deemed the principal one, and the plaintiff in that suit have the conduct of the consolidated suits. On the question being brought on appeal to me in Court I took time to consider my decision, in order that what was the practice on this point might be clearly determined. I have had several instances submitted to me, and I may refer especially to one in 1882—a case the circumstances of which were exactly similar to those in the present case. In the case to which I refer there was one suit instituted in the City of London Court on the 12th of August, 1882, and one suit brought in this Court on the 13th of August, 1882. The suit originally instituted in the City of London Court was, at the instance of the plaintiff in that suit, transferred to this Court, and an order was made in the registry consolidating the two suits, and making the transferred suit the principal cause. On appeal to the Judge of the Court of Admiralty (Sir R. J. Phillimore), he rejected with costs the application of the appellant to give the conduct of the consolidated suits to the plaintiff who had commenced his action in the High Court. As for this case, the practice of the Court on the point was clearly settled by Sir Robert Phillimore, and it is not my intention to differ with the view expressed by that learned Judge. I therefore vary the order I made in chambers by giving the conduct of the consolidated suits to the plaintiff in the suit commenced in the City of London Court and transferred here.

Solicitors—W. Batham, for the owners of the *Stork*; Lowless & Co., for the owners of the *Never Despair*.

PROBATE. 1884. April 1. } *In the goods of* HENRY BURTON SQUIRE GARDINER.

Administration durante minore ætate—Grant to Guardian—Passing over Next-of-kin of Infant—Discretion of Court.

A died in Jamaica, leaving an infant daughter, and having by his will appointed B and C to be his executors in Jamaica, and D, his sister-in-law, to be his English executrix and trustee and guardian of the infant, with power to appoint by deed or will a new trustee or trustees, or a new guardian or guardians. He directed the executors in Jamaica to pay the residue of his estate to the English executrix, to be invested in the name of the infant till she should attain the age of twenty-one. D predeceased A, having by her will appointed E and F as her executors and trustees, and nominated the said executors and trustees, or the survivor of them, as guardians or guardian of her infant niece. E renounced probate. The infant was residing with D at the time of the death of the latter, when she went to reside with F. After the death of A and D, the only next-of-kin of the infant were her aunts. One of the aunts was resident in India, another was in very needy circumstances and had been dependent on the bounty of the infant, and the third renounced administration.

The Court made a grant of administration of the estate of A, for the use and benefit of the infant till she should attain the age of twenty-one years, to F as her guardian.

Henry Burton Squire Gardiner died in the island of Jamaica on the 5th of Decem-

In the goods of Henry Burton Squire Gardiner, Prob.

ber, 1880. The deceased was a widower, and left only one child, Georgiana Waters Gardiner, who was fourteen years of age at the time of his death, and was then resident in England.

The deceased duly executed a will on the 28th of March, 1872, and a codicil on the 11th of October, 1874, both of which instruments were proved in the Supreme Court of the Island of Jamaica by John Delisser and James Otway, who had been appointed as the executors of the deceased in Jamaica.

The testator, by his will, directed his executors in Jamaica to sell all his real and personal property, and, after payment thereout of his testamentary expenses, debts and certain legacies, to pay the residue to his sister-in-law Georgiana Waters, whom he appointed to be his English executrix and trustee and guardian of his daughter, with power, either by deed or by will, to appoint a new trustee or trustees or a new guardian or guardians to the infant. He also directed that the residue should be invested in the name of his daughter till she should attain the age of twenty-one.

Georgiana Waters Gardiner had for several years resided with her aunt, Mrs. Waters, by whom she was treated as an adopted daughter.

Mrs. Waters died on the 29th of February, 1880, having by her will, bearing date the 25th of February, 1880, appointed Major-General Alexander Fraser and Charles Burnett as her executors and trustees, and nominated the said executors and trustees, or the survivor of them, to be the guardians or guardian of the said Georgiana Waters Gardiner.

Charles Burnett having renounced, probate of the will of Mrs. Waters was granted to Major-General Fraser.

After the death of Mrs. Waters, Georgiana Waters Gardiner went to reside with Major-General Gardiner, and had continued to do so up to the present time.

The next-of-kin of Georgiana Waters Gardiner were the two half-sisters of her father, Emily Joyce, widow, and Fanny Eliza Moore Image, wife of William Edmund Image, and her maternal aunt Fanny Thompson, who was married and resident in India.

Major-General Fraser, being desirous, with the consent of Georgiana Waters Gardiner, of obtaining, for her use and benefit, as her guardian, a grant of letters of administration of the estate of Henry Burton Squire Gardiner, Mrs. Image renounced administration. Mrs. Joyce was shewn by the affidavits to be in very needy circumstances, and to have received pecuniary assistance from her niece.

Middleton moved for a grant of letters of administration to Major-General Fraser, for the use and benefit of Georgiana Waters Gardiner, until she should attain the age of twenty-one years, as executor or guardian of the minor. The cases shew that the Court has a discretion to pass over the persons who would *prima facie* be entitled to the grant. One of them has renounced, and the absence of another in India, and the pecuniary position of the third, will, it is submitted, furnish adequate grounds for making the grant to the person elected by the minor.

He referred to *In the goods of Ewing* (1), *In the goods of Widger* (2), *In the goods of Weir* (3), *In the goods of Hay* (4) and *In the goods of Burchmore* (5).

THE PRESIDENT (SIR JAMES HANNEN).—The question is clearly one for the discretion of the Court. The fact that one of the aunts of the infant is resident in India is as good as any other ground, and the dependent position of another upon the bounty of the infant justifies me in passing her over. The third aunt is resident in India, and I shall therefore grant administration to Major General Fraser for the use of the infant till she attains the age of twenty-one.

Solicitors—Waddilove & Nutt, agents for Fitz-Hugh, Woolley & Baines, Brighton.

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(1) 1 Hag. 381.
(2) 3 Curt. 55.
(3) 2 Sw. & Tr. 451; 31 Law J. Rep. P. M. & A. 88.
(4) 35 Law J. Rep. Prob. & M. 3; Law Rep. 1 P. & D. 51.
(5) 43 Law J. Rep. Prob. & M. 1; Law Rep. 3 P. & D. 182.

[IN THE ADMIRALTY DIVISION AND IN THE COURT OF APPEAL.]

ADMIRALTY.
1884.
March 10, 11.
April 8, 22, 23, 28.

THE VERA CRUZ.*

Collision—Action for Loss of Life—Notice to Board of Trade—Foreign Ship—Contributory Negligence—Jurisdiction of Admiralty Court to entertain Suit in rem—Damage done by any Ship—Admiralty Court Act, 1861 (24 *Vict. c.* 10), *s.* 7—*Lord Campbell's Act* (9 & 10 *Vict. c.* 93)—*Court equally divided in opinion—Decision not binding.*

In an action under Lord Campbell's Act for loss of life occasioned by a collision,—

Held, *first, that section* 512 *of the Merchant Shipping Act*, 1854, *does not apply to cases of loss of life caused by a foreign ship.*

Secondly, that the breach of the rules for preventing collisions, to which the deceased was privy, and for which the Court would be bound to hold the ship to blame under the 17*th section of the Merchant Shipping Act*, 1873, *constitutes legal contributory negligence on the part of the deceased, even where there is no reason to believe that such breach of the regulation actually contributed to the accident.*

Thirdly, that contributory negligence on the part of the deceased did not debar the plaintiff from recovering any damages; but that, according to the rule obtaining in cases of collision, the plaintiff was entitled to recover a moiety of the damage she had sustained.

Per the Court of Appeal.—The Admiralty Court has no jurisdiction to entertain an action in rem to recover damages under Lord Campbell's Act for loss of life caused by a collison at sea.

The Court of Appeal is not bound by a decision of its own where that decision was come to by reason of the Judges who heard the case being equally divided in opinion.

Action *in rem* against a foreign ship for loss of life occasioned by collision. The facts are fully stated in the judgment.

* *Coram* Butt, J., in the Admiralty, and Brett, M.R.; Bowen, L.J., and Fry, L.J., in the Court of Appeal.

The following points were raised by the defendants:—

1. That the Court had no jurisdiction *in rem* for loss of life under Lord Campbell's Act.

2. That the plaintiff could not maintain the action, as she had not given notice to the Board of Trade in accordance with the 17 & 18 Vict. c. 104. s. 512.

3. That there had been contributory negligence on the part of the deceased, and that his representative could not therefore recover in the action.

The first point was taken *pro forma*, but was not argued.

Bruce, Q.C., and *French*, for the plaintiff.—Section 512 of the Merchant Shipping Act, 1854, does not apply to foreign ships—*The Wild Ranger* (1) and *Cope* v. *Doherty* (2). It is true that in the case of *The General Iron Screw Collier Company* v. *Schurmanns* (3) it was held that a British ship could limit her liability as against a foreign ship for a collision which occurred in British waters; but Wood, V.C., seems to have inferred that a foreigner was not entitled to limit his liability in similar circumstances.

[BUTT, J.—Is not section 54 of the Act of 1862 substituted for sections 504 and 505 and to be read as part of the Act of 1854? If so, must you not look to section 54 to find the meaning of the words "any such ship" in section 512?]

It is submitted not. Again, section 512 only applies to personal actions against the owner. There was no right to proceed *in rem* in actions for loss of life until the Admiralty Court Act was passed in 1861. Why should this condition precedent be imported into the new right of action, which was created eight years after? A similar point was decided in the Irish Admiralty Court in the case of *The Mullingar* (4), where it was held that the 8th section of 6 & 7 Will. 4. (Local and Personal Acts) c. 100, which required notice to be given one calendar month before bringing any action against the City of Dublin Steam Packet Company, had reference merely to actions *in personam* against the company, and not to actions *in rem* against the com-

(1) Lush. 533.
(2) 4 Kay & J. 367; 27 Law J. Rep. Chanc. 600.
(3) 1 Johns. & H. 180.
(4) 1 Asp. M.L.C. 252.

pany's vessels. The Merchant Shipping Act, 1854, did not apply to foreign ships.

On the question of contributory negligence, the Court, in the collision action, only found that there was a breach of the regulations which might by possibility have contributed to the collision. The 17th section of the Merchant Shipping Act, 1873, is a penal provision, and ought therefore to be construed strictly.

[BUTT, J.—What do you say to the case of *Thorogood* v. *Bryan* (5)?]

It is necessary for the defendant to shew that there was negligence which actually contributed to the collision. It must have conduced in fact; it is not sufficient that the Act of Parliament says it shall be taken as if it had. Besides, it is submitted that the 17th section of the Act of 1873 only applies to owners. But even if there was contributory negligence on the part of the deceased the plaintiff is entitled to recover, as the defendant might by the exercise of ordinary care have avoided the result of the collision—*Davies* v. *Mann* (6) and *Tuff* v. *Warman* (7). It was proved that the deceased was in the water after the collision holding on to a ladder, and those on board the *Vera Cruz* might have saved him by using ordinary diligence. If, however, the Court finds that the plaintiff cannot recover full damages, then it is submitted that the Admiralty rule as to division of damages is applicable (Judicature Act, 1873, s. 25. sub-s. 9).

[BUTT, J.—Has the Admiralty rule of divided damages ever been applied to a case of loss of life?]

It was held in the case of *Webster* v. *The Manchester, Sheffield and Lincolnshire Railway Company* (8), in an action for loss of life by collision between vessels, that preliminary acts must be filed, and the words are even larger in the sub-section referred to than in the rule as to preliminary acts.

They also cited the following cases:—*Armstrong* v. *The Lancashire and Yorkshire Railway Company* (9), *Radley* v. *The London and North Western Railway Company* (10) and *The Milan* (11).

Phillimore and *Bucknill*, for the defendant.—On the question of notice to the Board of Trade, it is submitted that section 512 of the Merchant Shipping Act, 1854, is applicable in the present case. By section 502, the 9th part of the Act applies to the whole of Her Majesty's Dominions—that means to whatever happens within Her Majesty's Dominions; and it has been held that the following sections apply to foreign ships in British waters. To find the meaning of the words "any such ship" it is necessary to refer back to sections 503 and 504. These sections have been repealed, and section 54 of the Act of 1862 substituted, which applies to foreign as well as British ships. The Act of 1861 only provides another way of enforcing a right; it does not give a fresh cause of action.

On the other part of the case, it is submitted that there was contributory negligence on the part of the deceased, and that the plaintiff cannot therefore recover anything. Lord Campbell's Act only gave a right at law where there was a right before death, and there could only be a right before death where there was no contributory negligence. The effect of the Act of 1861, giving jurisdiction *in rem* in cases of loss of life, was not to alter the rules on which damages were given, but to give a more effective remedy.

They cited the following cases:—*The Khedive* (12), *Hay* v. *Le Neve* (13), *The Chartered Mercantile Bank of India* v. *The Netherlands India Steam Navigation Company* (14), *The George and Richard* (15), *Smith* v. *Brown* (16), *The Hibernia* (17) and *The J. C. Stevenson* (18).

Bruce, Q.C., in reply.

Cur. adv. vult.

(5) 8 Com. B. Rep. 115.
(6) 10 Mee. & W. 546.
(7) 5 Com. B. Rep. N.S. 573; 27 Law J. Rep. C.P. 322.
(8) Law Rep. W.N. Jan. 5, 1884.
(9) 44 Law J. Rep. Exch. 89; Law Rep. 10 Exch. 47.
(10) 46 Law J. Rep. Exch. 573; Law Rep. 1 App. Cas. 754.
(11) Lush. 388.
(12) 52 Law J. Rep. P., D. & A. 1; Law Rep. 7 App. Cas. 795.
(13) 2 Shaw's Scotch App. 395.
(14) 52 Law J. Rep. Q.B. 220; Law Rep. 10 Q.B. D. 521.
(15) Law Rep. 3 A. & E. 466.
(16) 40 Law J. Rep. Q.B. 214; Law Rep. 6 Q.B. 729.
(17) 2 Asp. M.L.C. 454.
(18) 2 Asp. M.L.C. 1.

The Vera Cruz (App.), Adm.

BUTT, J. (on April 8).—On the night of the 11th of August, 1882, the schooner *Agnes* was run into and sunk by the Spanish steamship *Vera Cruz* near the Crosby lightship, outside the entrance to the river Mersey. William Seward, the master, and three others of the crew were drowned. Before and at the time of the collision the *Agnes* had two anchor-lights burning, one on the fore-stay and one on the topping-lift aft. These lights were good lights, but the one aft was some feet lower than it should have been pursuant to the regulation in force at the place of collision, which directs that the forward of the two lights shall be carried at a height not exceeding twenty feet above the hull, and the light aft at double the height of the other. The evidence shewed that the foremost light was about twelve feet, and the one aft about sixteen or possibly eighteen feet above the deck. The 17th section of the Merchant Shipping Act, 1873, provides:—"If in any case of collision it is proved to the Court before which the case is tried that any of the regulations for preventing collision contained in or made under the Merchant Shipping Acts, 1854 to 1873, has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shewn to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary." It is admitted that this section applied to the *Agnes*.

Two actions *in rem* were brought against the *Vera Cruz*. In the first action the plaintiffs were the owners of the schooner, and they sued for damages occasioned by the collision. In the second action the plaintiff is the administratrix of William Seward, the master of the *Agnes*. She claimed damages for the loss of her late husband, and of her son Thomas Seward, who was an apprentice on board, and who was also drowned; but at the trial of the action the claim for damages in respect of her son's death was abandoned. The first action came on for trial on the 17th of March, 1884, and it was arranged that the evidence taken in that action should be received as evidence in the second action.

The defendant, amongst other matters, relied on a plea of compulsory pilotage. The Court decided that the collision was caused by the negligence of those on board the *Vera Cruz*, and that such negligence was not the negligence of the pilot alone. It also held both vessels to blame, in conformity with the cases prescribing the effect to be given to section 17—namely, that if the infringement of the regulations might by possibility have caused or contributed to the collision, the ship by which they are infringed shall be deemed to be in fault.

The question now under consideration is whether the defendant is liable in the second action to any, and, if so, to what extent for the damage occasioned by the loss of the said William Seward. I find as a fact that the death of the said William Seward was occasioned by the negligence of the defendant's servants. As a question of contributory negligence on the part of the said William Seward arises, it should be stated that he was on the deck of the *Agnes* when her riding lights were hoisted, and that he saw the position in which they were placed. The defendant contends, in the first place, that no action *in rem* will lie under Lord Campbell's Act.

This question was not argued before me, it being admitted by the defendant's counsel that for the purposes of to-day this matter is concluded by authority, and that such authority is against them—*The Franconia* (19), *The Guldfaxe* (20) and *The Explorer* (21).

Secondly. The defendant contends that this action cannot be maintained, the Board of Trade having neither instituted nor refused to institute the enquiry mentioned in section 512 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104).

If this section applies to the present case it is clear that the action must fail; but I am of opinion that it has no application to cases of loss of life caused by a foreign ship. It seems clear that none of the sections of the Act of 1854, from section 502 to section 515 inclusive, had originally any application to foreign vessels; but it was

(19) 46 Law J. Rep. P., D. & A. 33; Law Rep. 2 P. D. 163.

(20) 38 Law J. Rep. Adm. 12; Law Rep. 2 A. & E. 325.

(21) 40 Law J. Rep. Adm. 41; Law Rep. 3 A. & E. 289.

contended on behalf of the defendant that the joint effect of sections 1 and 54 of the Merchant Shipping Act, 1862 (25 & 26 Vict. c. 63), makes section 512 of the earlier Act applicable to such cases as the present. There is no doubt some foundation for this contention; but I am informed that the Board of Trade almost from the outset abandoned all notion of instituting the proceedings contemplated by the 507th and following sections of the Act of 1854, even in the case of British ships; and I do not believe that, when the Act of 1862 was passed, it was intended to make any such proceedings applicable to foreign ships. At all events, I do not think there are words which compel me to hold that this has been done, and I therefore decline to dismiss the suit on such grounds.

The next question I have to consider is whether a defence to the whole or any part of the plaintiff's claim, on the ground of contributory negligence on the part of the deceased William Seward, has been established. Both sides have argued that the old common law rule as opposed to the Admiralty rule in cases of damage to ships is applicable to this cause: counsel for the defendant asserting that there was contributory negligence on the part of William Seward which bars the plaintiff's right to recover at all; and counsel for the plaintiff maintaining that the facts of the case do not support such a defence, and that the plaintiff is therefore entitled to recover full damages.

It is argued that, inasmuch as one of the statutory rules was infringed, I must, by virtue of section 17 of the Act of 1873, hold contributory negligence to have been proved, and dismiss the suit.

On the other hand, it is said that even if negligence must by virtue of the statute be imputed to the deceased, yet, inasmuch as by the exercise of ordinary care the defendant's servants might have avoided the collision, the plaintiff is, by the old common law rule at all events, entitled to recover full damages, and the judgment of the House of Lords in the case of *Radley* v. *The London and North Western Railway Company* (10) was cited as an authority for that proposition. No doubt there is a passage in Lord Penzance's opinion in that case which favours such a construction. That passage is as follows:—"But there is another proposition equally well established, and it is a qualification upon the first—namely, that though the plaintiff may have been guilty of negligence, and although that negligence may, in fact, have contributed to the accident, yet, if the defendant could in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence would not excuse him." I think this passage, if it is to be understood in the sense for which the plaintiff in the present case contends, which I doubt, went beyond what the House of Lords intended. A decision to that effect would put an end to the doctrine of contributory negligence altogether. Defendants are not liable in actions of this nature unless they or their servants have been guilty of negligence, or, in other words, have failed to exercise "ordinary care and diligence." Therefore the question of the plaintiff's contributory negligence could not arise unless the defendant had failed to exercise "ordinary care and diligence." What becomes of the doctrine of contributory negligence on the part of the plaintiff, if the mere want of "ordinary care and diligence" on the part of a defendant is an answer to it: when in all cases where the question of contributory negligence arises there has been *ex hypothesi* a want of such "ordinary care and diligence" on the part of the defendant! In the passage of the report immediately following that which I have quoted, Lord Penzance goes on to say:—"This proposition, as one of law, cannot be questioned. It was decided in the case of *Davies* v. *Mann* (6), supported in that of *Tuff* v. *Warman* (7) and other cases, and has been universally applied in cases of this character without question." Now, the case of *Davies* v. *Mann* (6) certainly does not support such a proposition, neither, so far as I am aware, do any of the other cases, with the exception, perhaps, of *Tuff* v. *Warman* (7).

The judgment of the Court delivered by Mr. Justice Wightman in that case contains the following passage:—"It appears to us that the proper question for the jury in this case, and, indeed, in all others of the like kind, is whether the damage

was occasioned entirely by the negligence or improper conduct of the defendant, or whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary and common care and caution, that but for such negligence or want of ordinary care and caution on his part, the misfortune would not have happened. In the first case the plaintiff would be entitled to recover, in the latter not—as but for his own fault the misfortune would not have happened. Mere negligence or want of ordinary care or caution would not, however, disentitle him to recover, unless it were such that but for that negligence or want of ordinary care or caution the misfortune could not have happened, nor if the defendant might, by the exercise of care on his part, have avoided the consequences of the neglect or carelessness of the plaintiff. This appears to be the result deducible from the opinion of the Judges in *Butterfield* v. *Forrester* (22), *Bridge* v. *The Grand Junction Railway Company* (23), *Davies* v. *Mann* (6) and *Dowell* v. *The General Steam Navigation Company* (24)."

I have looked at the cases there cited, but they contain nothing to support the last part of the proposition. What these cases really decide is, that although there may have been negligence on the part of the plaintiff, yet, unless he (the plaintiff) might by the exercise of ordinary care have avoided the consequences of the defendants' negligence, he is entitled to recover; if by ordinary care he might have avoided them, he is the author of his own wrong. (See the judgment of Mr. Baron Parke in *Davies* v. *Mann* (6).) This doctrine, it will be seen, is a different thing from that for which the plaintiff here is contending; and I think her contention on that head cannot be maintained.

But then comes the question, am I bound to hold that there was under the circumstances contributory negligence on the part of the deceased William Seward? Apart from the statute, contributory negligence would mean contributory negligence actually conducing to the collision. Now, as a matter of fact, there is no evidence to shew, neither is there reason to believe, that such an alteration of the relative positions of the lights of the schooner as would have been a compliance with the rule would have avoided the collision. Unless, therefore, by force of the statute, I am bound to impute contributory negligence to the deceased, the plaintiff is entitled to recover the whole amount of the damage she has sustained by the loss of her husband. Has section 17 such effect? I have already given that effect to it in the first of these actions—that between the owners of the *Agnes* and the present defendant. But it is said that the enactment is in its nature penal: that I ought not to apply it unless its words are clear and distinct: that by its terms the owner is to be deemed to be in fault, and that therefore no similar inference is to be drawn against the captain. So to decide in the present case would be to hold the owner responsible for the negligent act of his servant, the captain, and in the same breath to exempt him from the consequences of his negligence. This I cannot do. I therefore decide that the loss of the life of William Seward was occasioned by the negligence of the defendant, and that there was contributory negligence on the part of the captain, contributory negligence conducing to the result.

What consequences are to follow? Am I to apply the old common law rule and dismiss the suit; or am I, in conformity with another contention of counsel, to decree that half the damage sustained by the plaintiff by the loss of her husband be paid by the defendant. In the judgment of the Privy Council in the case of *The Laconia* (25) there is the following passage:—"The Judge found both parties to blame, and he ordered that the damage sustained by each should be added together, and each party pay one half. The effect on the present occasion would be a loss to the *Laconia* of about 20,000*l*. But it is not to the effect we must look: we must direct our attention to other considerations. Had the rule prevailing at common law been adopted, each party would have had

(22) 11 East, 60.
(23) 3 Mee. & W. 244.
(24) 5 E. & B. 195.

(25) Br. & Lush. 117–146.

to bear his own loss. Opinions may differ, and indeed do differ, as to which course is most consonant to justice. This question we are not called upon to decide; but what we have to decide is, when the proceeding is *in rem*, what ought to be the rule? What was the intention of the authority which sanctioned and made legal the exercise of the jurisdiction *in rem*? Could it be intended to constitute a jurisdiction *in rem* with a common law remedy? We think that no such anomaly could be intended, and therefore concur in the view of the Consular Court."

The course there indicated is that which I shall take. True it is that the exact mode of assessing the damage contemplated in that case cannot be followed in this action, because as between the present plaintiff and the defendant the damage is all on one side. But I think that the case of *The Milan* (11) is in principle sufficiently analogous to allow of my following the decision of Dr. Lushington in that case, and decreeing that the plaintiff do recover a moiety of the damage she has sustained.

I refer it to the Registrar and merchants to ascertain the amount.

May 22, 23.—The defendant appealed from a formal decision of Butt, J., overruling a protest to the jurisdiction of the Court to entertain a suit *in rem* for loss of life under Lord Campbell's Act (9 & 10 Vict. c. 93).

The petition on protest stated, in substance, the following facts:—The plaintiff was a British subject, resident in England. The defendant, the sole owner of the *Vera Cruz*, was a Spaniard, resident in Spain. In August, 1882, the *Vera Cruz*, whilst on a voyage from Liverpool to ports in Spain and elsewhere, came into collision with a British vessel, the schooner *Agnes*, which was sunk, and her master (the plaintiff's husband) and some of the crew and passengers, including also the plaintiff's son, were drowned.

In July, 1883, the *Vera Cruz* was in the port of Liverpool, and was there arrested in a suit *in rem* by the owners of the *Agnes* to recover damages sustained by them by reason of the collision. In November, 1883, the present action *in rem* was commenced by the plaintiff to recover damages for the loss of her husband and son.

A protest which was entered by the defendant to the jurisdiction of the Admiralty Court to entertain the suit was formally overruled by Butt, J., who considered himself bound by the decision of the Court of Appeal in *The Franconia* (19).

The defendant appealed.

Phillimore and *Bucknill*, for the defendant.—The decision of the Court of Appeal in *The Franconia* (19), to the effect that the Court has jurisdiction to entertain a suit *in rem* to recover damages under Lord Campbell's Act, is not binding on the Court of Appeal in a subsequent case where the same question is raised, where the earlier decision is arrived at by reason of the members of the Court of Appeal being equally divided in opinion. A decision of the House of Lords, arrived at under similar circumstances, would no doubt be binding upon that tribunal, and also upon all inferior Courts in a subsequent case—*Beamish* v. *Beamish* (26) and *The Queen* v. *Millis* (27). The argument upon the question as to the jurisdiction of the Admiralty Court to entertain the suit *in rem* was substantially the same as in *The Franconia* (19).

The following authorities were referred to—The Admiralty Court Act, 1861 (24 Vict. c. 10), s. 7; Lord Campbell's Act (9 & 10 Vict. c. 93), ss. 1 and 2; Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 504 and 514; *Smith* v. *Brown* (16), *The Sylph* (28), *The Ruckers* (29), *The Agincourt* (30), *The Beta* (31), *Taylor* v. *Dewar* (32), *The Guldfaxe* (20), *The London and South Western Railway Company* v. *James* (33), *Glaholm* v. *Barker* (34),

(26) 9 H.L Cas. 274.
(27) 10 Cl. & F. 534.
(28) 37 Law J. Rep. Adm. 14; Law Rep. 2 A. & E. 24.
(29) 4 Ch. Rob. 73.
(30) 1 Hag. Adm. 271.
(31) 38 Law J. Rep. Adm. 50; Law Rep. 2 P.C. 447.
(32) 5 B. & S. 58; 33 Law J. Rep. Q.B. 141.
(33) 42 Law J. Rep. Chanc. 337; Law Rep. 8 Chanc. 241.
(34) 35 Law J. Rep. Chanc. 259 Law Rep. 1 Chanc. 223, 251.

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The Explorer (21), *Simpson* v. *Blues* (35) and *James* v. *The London and South Western Railway Company* (36).

French, for the plaintiff.—The petition on protest relates merely to the jurisdiction of the Admiralty Court, and is not limited to the arrest of the ship or to the proceedings *in rem*.

Bright v. *Hutton* (37), *The Franconia* (19) and *The Ruckers* (29) were also cited.

Phillimore, in reply, referred to *Ridsdale* v. *Clifton* (38) and *Hawkins* v. *Nethercole* (39).

Cur. adv. vult.

The following judgments were delivered on the 28th of April:—

BRETT, M.R.—In this case an action was brought in the Admiralty Court against a shipowner to recover damages, under Lord Campbell's Act, on behalf of the relations of a person killed in a collision which happened within the three miles limit, and therefore so far within the municipal jurisdiction of England. But the shipowner was a foreigner resident abroad, and the manner in which he was brought before the Court was by seizing his ship while in England—that is, by a process *in rem*. The owner was not in England after the accident, and was never served personally, nor was notice of the suit ever given to any person on his behalf. A protest was then entered against the jurisdiction of the Admiralty Court, and Mr. Justice Butt, without expressing any opinion, felt himself bound by the decision in *The Franconia* (19), and overruled the protest; thereupon the defendant appealed to this Court.

The first point here taken was, that the Court of Appeal was bound by a previous decision, in which, upon an appeal on a similar point, the Court was equally divided, and therefore that the judgment of the Admiralty Court in favour of the jurisdiction stood. It was urged that, as there was a decision in this Court in a case in which the judgment was that the jurisdiction must be allowed, the Court was bound by that decision. The question therefore arises, whether any Court below the House of Lords is bound by a decision, either of its own or of any other Court of co-ordinate jurisdiction, where that decision was come to on an equal division of the Judges who heard the case. As far as my experience goes, when there were three different Courts in Westminster Hall, each of them by way of comity considered itself bound by the decision of another Court of co-ordinate jurisdiction. A Court is not bound either at common law or by statute by the decisions of its own or any other Court of co-ordinate jurisdiction. It was only by a traditional comity between the Judges, in order to ensure uniformity of decision, that a Court followed a previous decision until it could be reviewed by a higher Court. But the moment a Court is equally divided in opinion, the comity ceases to exist. I am aware that if the books be examined it will be found that it was the invariable practice where a Court of co-ordinate jurisdiction or any other Court gave a decision by an equal division of its members, for the Court which came afterwards to consider which view it would follow. With regard to the House of Lords it is probably different, because it is the ultimate Court; and I am not certain whether such a decision is conclusive, although I am inclined to think that it may be. But if it is, it is in order that a decision, where it has been come to by the highest tribunal of all, may be taken to be the law, otherwise there would be a vacillation of the law. It is therefore clear that the Court of Appeal is not bound by a decision given in this Court where the Court was equally divided. The question here depends upon this: unless jurisdiction is given in this case to the Admiralty Court by section 7 of the Admiralty Court Act, 1861, there is no jurisdiction at all. This is not a case in which the shipowner has been personally served in England for the default of his ship, so that an action could be maintained against him in the Queen's Bench Division; the only difference being that the action was brought in the Admiralty Court instead of in the Queen's Bench Division. If it

(35) 41 Law J. Rep. C.P. 121; Law Rep. 7 C.P. 290.

(36) 41 Law J. Rep. Exch. 186; Law Rep. 7 Exch. 187.

(37) 3 H.L. Cas. 341.

(38) 46 Law J. Rep. P.C. 27; Law Rep. 2 P. D. 276.

(39) 3 De Gex, M. & G. 1; 24 Law J. Rep. Chanc. 332.

had been an action which the High Court had jurisdiction to entertain, the Judge of the Admiralty Court being a Judge of the High Court, and the other conditions having been fulfilled, it would have only been a question of removing the action from the Queen's Bench Division into the Admiralty Court. If it was right that that should be done, it would not be a question of jurisdiction. But, unless the present case is within section 7, there is no jurisdiction, because, unless the seizure of the ship gave jurisdiction, the defendant has not been served personally, nor has he had notice of the action. That would be fatal to the jurisdiction of the Court. The question whether this case comes within the section depends upon the proposition that section 7 is applicable to grievances for which a remedy is given by Lord Campbell's Act. The answer to that depends upon the construction of both Acts. In the case of *The Bilbao* (40), which came before Dr. Lushington in 1860 in the Admiralty Court, damage had been done to a foreign ship by a barge in a river, and the question was whether the then existing Admiralty Act gave the Admiralty Court jurisdiction in that case. It was pointed out by Dr. Lushington that it did not, because the statute only gave jurisdiction where damage was done *to* a ship, the words "*by* a ship" being left out. In 1861 the statute now in question was passed, and section 7 contains the words "by any ship." In 1862 the case of *The Malvina* (41) came before Dr. Lushington, in which the damage was done by a ship. There it was urged that the Court had no jurisdiction by reason of the section; but Dr. Lushington said that the section had been passed for the purpose of meeting such a case, the earlier statute having provided only for damage done to a ship. In my opinion it was passed for that purpose.

What is the meaning of the words "any claim" in section 7? It seems to me that the only claim for damage which can be made is a claim for damage in which the ship is the active instrument of the damage; and if the section is read in this way the case comes to this, that the Admiralty Court shall have jurisdiction over any cause of action which cause of action is damage done physically by a ship. I am not prepared to say that it is confined to damage done to property, and that if by mismanagement of the ship the bowsprit struck and injured a man that would not be damage done within this section. It clearly does not apply to damage done to a man in or on a ship, but where it is done by a ship—that is, where the ship is the physical instrument by which injury is caused either to property or to person.

If that be the true meaning of section 7, what is the cause of action given by Lord Campbell's Act? It seems to me that it is not such a cause of action as I have described. That Act was passed to meet the case of a person who has received a personal injury—that is, an injury not to his estate but to himself as a person, the doctrine of law being that the cause of action died with the person. Neither that doctrine nor its application has been altered by Lord Campbell's Act; for a personal cause of action dies just as much now as it did formerly. An executor cannot bring an action as such for injury to the estate, nor for injury to the person; and if all that has happened is that the person has been killed, there is no cause of action, and so far as he is concerned the action is dead. Lord Campbell's Act gives a right of action under certain circumstances to persons who never had any such right before, if something else has happened beside an injury to the deceased. The right of action is given to them, but not to the representative of the deceased person as his representative, for in that action the executor or administrator does not represent the deceased at all, but is a mere instrument for the purpose of maintaining the action on behalf of those persons. Now what is the cause of action given by the Act? The death of the deceased caused by the negligence of the defendant is part only of the cause of action; under the Act an injury which causes pecuniary damage to the persons on whose behalf the action is brought must have been done by the death. The cause of action therefore is not the death alone of the deceased caused by the negligence of the defendants, but also the pecuniary loss to those persons who are

(40) Lush. 149.
(41) Lush. 493.

defined by the Act of Parliament. Therefore the thing done by a ship is not the cause of action, but is merely one of the ingredients of that cause of action. The Admiralty Court Jurisdiction Act, 1861, does not apply to that case, and does not therefore give jurisdiction to the Admiralty Court to try directly such a cause of action. I am not prepared to say that in no case could the Admiralty Court enquire into the amount of damage done to a deceased person in respect of an injury caused partly by the negligent management of a ship; but the Court of Chancery had and has jurisdiction to limit the amount of a shipowner's liability to a certain value per ton, and if there are certain other claimants on the ship, to distribute the regulated amount amongst them. But in that case the jurisdiction is given where the liability as to the negligence is admitted. That jurisdiction has passed to the Admiralty Division. In such a case, if one of the claimants is a person mentioned in Lord Campbell's Act, it may be—and I am inclined to think that it is, although it is not necessary to decide the point—that the Admiralty Court or the Court of Chancery must, in order to distribute the damages amongst all of the claimants, and to do that which is within their jurisdiction, entertain something which, but for that, would not be within their direct jurisdiction. If persons had made a claim either at common law or under Lord Campbell's Act for these damages in any of the other Divisions, when it comes indirectly before the Admiralty Court as a necessary part of their jurisdiction, the Admiralty Court must, in order to fulfil that which is brought within its jurisdiction, entertain that which cannot be directly but is indirectly brought within it. I remember having to argue that point before Dr. Lushington, with regard either to a bill of lading or a charter-party, in a case where the Admiralty Court had not direct jurisdiction, but where it came indirectly before the Court in a case where it had not jurisdiction. I persuaded him as to this doctrine, that although the Court has not direct jurisdiction, yet if the matter is brought before it indirectly as a necessary part of the jurisdiction, then it must entertain that which it has otherwise no jurisdiction to entertain. For these reasons I maintain the opinion which I expressed in the case of *The Franconia* (19), in which I agreed with Lord Justice Bramwell, that the Admiralty Court had no jurisdiction under the Act of 1861, when a case like the present one was brought directly before the Court. If it had no jurisdiction under that Act, then it has no jurisdiction at all. Neither has any Court jurisdiction in this case, because the defendant has not been brought by any legitimate means within the jurisdiction of any English Court. The appeal must therefore be allowed.

BOWEN, L.J.—I also think that the question whether the Court has jurisdiction to entertain the action is left open, for the reasons given by the Master of the Rolls. I express no opinion whether a claim for personal injury would give jurisdiction to the Admiralty Court under the statute which has been cited, but I feel satisfied that the claim by an executor or administrator under Lord Campbell's Act does not. This is the ground of the reasoning in the considered judgment of Lord Justice Bramwell and of the present Master of the Rolls in the case of *The Franconia* (19), with the reasoning of which I agree. That decision, and probably the present one, is based upon this kind of consideration—is the present claim a claim for damage done by a ship? The history of the legislation, as pointed out by the Master of the Rolls, proves that it is not. But, apart from the history, the natural and obvious meaning of the words used in the Act of Parliament leads to the same conclusion. It seems to me that the claim is for compensation for damage done by the ship—that is, for damage done by some one with a ship as the noxious instrument. Any damage done must either be the killing of the deceased or the injuriously affecting the interests of the family of the deceased. The difficulty in the way of saying that the damage done is the killing of the deceased is, that the claim is not for killing the deceased, inasmuch as that gave no right of action either before or after Lord Campbell's Act. To

escape from that difficulty, it was contended for the respondent that the damage done is the injuriously affecting the interests of the family of the deceased; but then arises another difficulty, because the injuriously affecting the interests of the family at that time is not a damage done by the ship, but is caused by a combination of circumstances of which the death occasioned by the ship is only one.

FRY, L.J.—I agree. I think that, notwithstanding the decision in the case of *The Franconia* (19), the question as to jurisdiction is open to us, and that we are bound to determine it. I come to that conclusion, not only from the experience of the Master of the Rolls in similar cases, but also bearing in mind what was said by Lord Truro in *Bright* v. *Hutton* (37) and by Lord Cairns in *Ridsdale* v. *Clifton* (38). I think, therefore, that as the Court of Appeal were equally divided in opinion in *The Franconia* (19), the question is left open for this Court upon another hearing; and although that case was binding upon the parties to it, it would not be binding upon other persons. Then comes the question which has arisen upon section 7 of the Act of 1861. The Master of the Rolls has pointed out that the action can only be maintained upon the ground that jurisdiction was given to the Admiralty Court under that section. Two questions have been argued—first, does the word "damage" include injury to the person? That is a point upon which there has been much divergence of opinion, but I have come to the conclusion that it does. I agree with what was said by Lord Justice Baggallay and concurred in by Lord Justice James in *The Franconia* (19), that "the words of the 7th section of the Admiralty Court Act, 1861, are perfectly general. Taken by themselves they would appear to confer a jurisdiction upon the Court of Admiralty to entertain all claims in respect of damage done by a ship, whatever may be the nature of the damage, whether to person or to property; there is nothing in the context of the section to suggest that the word 'damage' should be limited in its meaning, and the statute, being remedial of a grievance, should receive a liberal rather than a narrowed construction." I am also confirmed in that view by the words of the preamble to the statute. Then as to the second question, assuming that injury to the person is within section 7, is the cause of action given by Lord Campbell's Act also within it? Let me compare these two causes of action—namely, an action for damage done to a barge or breakwater by the bowsprit of a ship, and an action under Lord Campbell's Act in consequence of the death of a person injured by the bowsprit. In the first case the cause of action is damage actually done by the bowsprit of the ship and nothing more; in the second case the cause of action under Lord Campbell's Act is the injury to the relatives of the deceased person resulting from the death of that person which was caused by the ship. Therefore the words "cause of action" simply mean damage done by the ship; and it is also to be borne in mind that the words of section 7 are not "for damage resulting from or arising out of or in respect of damage done," but simply "for damage done." I therefore agree with the view to the same effect expressed by Lord Justice Bramwell and Lord Justice Brett in *The Franconia* (19). The appeal must therefore be allowed.

Appeal allowed (42).

Solicitors—Gregory, Rowcliffe & Co., agents for Hill, Dickinson & Co., Liverpool, for appellant; Jackson & Evans, agents for R. O'N. Pearson, Ulverston, for respondent.

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(42) See *Read* v. *The Great Eastern Railway Company*, 37 Law J. Rep. Q.B. 273; Law Rep. 3 Q.B. 555.

ADMIRALTY.
1884.
March 8, 10.

THE EMMY HAASE.

Collision — Signals for Assistance — Stopping and Reversing.

A vessel which has been in collision with another is bound, in order to comply with the provisions of section 16 *of the Merchant Shipping Act,* 1873, *to answer signals made by the vessel with which she has been in collision, even where she is unable, owing to the damage she has herself sustained, to stand by the other ship.*

The officer in charge of a steamship which is approaching another so as to involve risk of collision is not required to stop and reverse his engines instantaneously, but some short time must be allowed him in which to judge what course he ought to adopt in the circumstances.

Action for damage by the owners of the steamship *Mulgrave* against the owners of the steamship *Emmy Haase* in respect of a collision which occurred about 5 A.M. on the 2nd of February, 1884, in the Would, off Hasboro'. The plaintiffs alleged, amongst other things, that the side lights of the *Emmy Haase* were not duly exhibited, and that her engines were not duly or in due time eased, stopped or reversed before the collision.

The defendants charged the *Mulgrave* with not keeping a good look out and with improperly porting. They also alleged that those in charge of the *Mulgrave* improperly failed to comply with the provisions of the Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85), s. 16 (1).

(1) Merchant Shipping Act, 1873 (36 & 37 Vict. c. 85), s. 16: "In every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew and passengers (if any), to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

The witnesses from the *Emmy Haase* stated that when the two ships were about four hundred yards apart, green light to green light, the *Mulgrave* opened her red light under a port-helm, rendering a collision imminent. The engines of the *Emmy Haase* were thereupon stopped, and shortly afterwards the order was given to reverse full speed; but before the order could be carried out, the collision occurred.

It appeared that after the collision the *Emmy Haase*, which had received serious damage and was thought to be in danger of foundering, burned blue lights and fired rockets as signals for assistance. The *Mulgrave* had also sustained considerable damage, and her anchor having been swept from her bows in the collision, the chain paid out and she remained at anchor. Her side lights were taken in, and her masthead light was lowered to the usual height of an anchor light; but from the heading of the *Mulgrave* while at anchor this light could not be seen on board the *Emmy Haase*. No signals were made in answer to those of the *Emmy Haase*, which the witnesses from the *Mulgrave* denied having seen.

Charles Hall, Q.C., and *Bucknill* were for the plaintiffs.

Phillimore and *F. W. Raikes* for the defendants.

The following cases were cited:—*The Khedive* (2) and *The Benares* (3).

BUTT, J.—In this case we think it quite clear that the evidence satisfactorily establishes that the *Emmy Haase* carried proper regulation lights, which were burning at the time of the collision, and that they ought to have been seen by those on board the *Mulgrave* at a considerably

"If he fails so to do, and no reasonable cause for such failure is shewn, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect or default.

"Every master or person in charge of a British vessel who fails without reasonable cause to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanour; and if he is a certified officer, an enquiry into his conduct may be held, and his certificate may be cancelled or suspended."

(2) Law Rep. 5 App. Cas. 876.

(3) *Ante*, p. 2; Law Rep. 9 P. D. 16.

The Emmy Haase, Adm.

greater distance than they in fact were. The conclusion, therefore, to which I have come is that the cause of the collision was a bad look out, leading to a very wrong manœuvre on the part of the *Mulgrave*; and therefore that the *Mulgrave* was to blame I have no doubt. I think also that the *Mulgrave* was to blame on the statutory enactment with reference to rendering assistance in cases of collision. We think it is impossible that the lights burnt on board the *Emmy Haase* could not have been seen by those on board the *Mulgrave*; and though the injury to the *Mulgrave* may have been so great that she could not render assistance by standing by after the collision, yet she might have sent up rockets or hoisted a globe-light to shew her whereabouts to the *Emmy Haase*; and had she done so I should consider that she had complied with the Act of Parliament. We think therefore that the *Mulgrave* is to blame both for improper navigation and for disobedience to the enactment requiring her to render assistance.

We now come to the question whether the *Emmy Haase* reversed her engines in due time. That is a matter on which I myself have had very considerable doubt, and I am not quite certain whether, if I had been left to my own unaided judgment, I should have decided as I am about to do. It is, however, the opinion of the Trinity Masters that, having regard to the manœuvres of the *Mulgrave*, and taking the evidence on both sides into consideration, there must have been a want of the exercise of proper vigilance on the part of those on board the *Emmy Haase*, or the wrong manœuvre of the *Mulgrave* would have been observed by them in sufficient time to have enabled them to stop and reverse their engines with effect. We cannot accept the story that only one minute or something less elapsed between the time when the red light of the *Mulgrave* was seen and the collision. We think there must have been more, and something considerably more. If that is so, we do not think the *Emmy Haase* did right in not sooner reversing her engines. Although the question does not now arise, I may say that I believe in all these cases where it is necessary to stop and reverse, that instantaneous stopping and reversing, in compliance with article 18, the very instant there is danger of collision, is not what is required. A man has to judge whether stopping and reversing is necessary, and he has also to judge whether any other rule applies. I do not think that a Court of justice can say that a man has acted wrongly in not stopping and reversing instantaneously. Some short time must be allowed. If in this case I had been alone, I might have decided that the engines of the *Emmy Haase* had been stopped and reversed in due time, and that this short period of time had not been exceeded; but the Elder Brethren have so strong a view on this point, that I do not feel entitled to differ from them.

The result is, I must hold both these vessels to blame.

Solicitors—Thomas Cooper & Co., for plaintiffs; Botterell & Roche, for defendants.

ADMIRALTY.
1884.
April 8, 29.

THE PONTIDA.

Bottomry — Cargo Owners — Excessive Amount — Commissions — Maritime Premiums.

The master of a ship is agent of the owners of cargo ex necessitate only, and cannot by giving a bottomry bond for an excessive amount fix the owners of cargo with liability for more than was necessary for the voyage. The same considerations apply to exorbitant commissions and maritime premiums.

The question of excess is for the Registrar and merchants.

Action on a bottomry bond given at St. Michael on ship, freight, and cargo.

The owners of the ship admitted their liability; but the owners of cargo, without contesting the validity of the bond, disputed the amount claimed.

The Pontida, Adm.

Petition by the plaintiffs in objection to the report of the Registrar making reductions in the amount claimed under the bond, for metalling the ship at St. Michael, for commissions, and maritime premium.

Phillimore and *Aspinall*, for the plaintiffs, in objection to the Registrar's report.

Bigham, Q.C., and *J. Gorell Barnes*, for the defendants.

The following cases were cited:—*The Royal Arch* (1), *The Cognac* (2), *The Glenmanna* (3), *The Jane* (4), *The Orelia* (5), *Prince of Saxe Cobourg* (6), *The Vibilia* (7), *The Royal Stewart* (8), *Messina* v. *Petrococchino* (9), *The Roderick Dhu* (10), *The Augusta* (11), *The Nelson* (12), *The Albion* (13), *The Lord Cochrane* (14), *The Huntley* (15), *The Zodiac* (16), *The Tartar* (17), *The Calypso* (18), and *La Ysabel* (19).

Cur. adv. vult.

BUTT, J. (on April 29).—This is an action brought by the plaintiffs, the Comptoir d'Escomte de Paris, as holders of a bottomry bond given at St. Michael on the Italian ship *Pontida*, her freight, and the cargo of wheat laden on board her.

The shipowners admitted their liability; but an appearance was entered on behalf of the owners of cargo, who dispute the amount, although they do not contest the validity of the bond.

The matter having been referred to the Registrar and merchants, the plaintiffs' claim of 4,386*l.* 0*s.* 8*d.* was by them reduced to 3,685*l.* 3*s.* 4*d.*, with interest.

(1) Swa. 269.
(2) 2 Hag. 377.
(3) Lush. 115.
(4) 1 Dodson, 461.
(5) 3 Hag. 75.
(6) 3 Moore, P.C. (o.s.) 1.
(7) 1 Wm. Rob. 1.
(8) 2 Spinks, 258.
(9) 41 Law J. Rep. P.C. 27; Law Rep. 4 P.C. 144.
(10) Swa. 177.
(11) 1 Dodson, 283.
(12) 1 Hag. 169.
(13) 1 Hag. 333.
(14) 2 Wm. Rob. 320.
(15) Lush. 24.
(16) 1 Hag. 320.
(17) 1 Hag. 1.
(18) 3 Hag. 162.
(19) 1 Dodson, 273.

The reductions of which the plaintiffs complain relate to charges for metal, commissions, and bottomry premium. With reference to the item for metalling the ship the plaintiffs contend—First, that it being admitted that some metal was necessary, and the lender on bottomry not being the ship's agent, but a banker who came forward in answer to advertisements, it was not competent for the Registrar to go into the question of the reasonableness of the quantity or price of the metal. Secondly, that the bond, having been entered into with the sanction and approval of the Italian consul at St. Michael, is by Italian law binding on all parties. As to this latter contention it is sufficient to say that there is no evidence of the Italian law being such as is alleged. With respect to the quantity of metal used and the price charged, the question in this, and in all such cases, must be—was the expenditure necessary for the completion of the voyage? The master is, and can only be, agent of the owners of cargo so as to bind them *ex necessitate*; and it is no more within his competency to fix them with liability for an excessive quantity or an excessive price of material, than for material none of which was necessary for the voyage. The question of excess must always be for the Registrar and merchants. The same considerations apply to the commissions and maritime premium, both of which appear to me exorbitant. It is scarcely necessary to cite authority for what I consider the settled law and practice of this Court, to refer questions of excessive charges—whether for repairs, commissions, or premiums—to the Registrar and merchants; but the observations of Dr. Lushington in *The Lord Cochrane* (14) and of Lord Stowell in *The Gratitudine* (20) may be referred to.

It was further contended, more especially I think with respect to the commissions, that the ship might have been detained at St. Michael had payment been refused; but, as pointed out by Lord Stowell in the case of *The Augusta* (11), that alone will not suffice. With regard to the facts, it does not appear to me that

(20) 3 C. Rob. 240.

The Pontida, Adm.

the Registrar and merchants were precluded by the evidence adduced from exercising their discretion in the matter, or that they have erred in its exercise. I must therefore overrule the objections, and confirm the Registrar's report with costs.

Solicitors—Lowless & Co., for plaintiffs; Ingledew & Ince, agents for Henry Brittan & Co., Bristol, for defendants.

PROBATE. 1884. April 29. } *In the goods of* PRINCE PETER GEORGEVITCH OLDENBURG.

Administration — Limited Grant — Foreign Law — Evidence — Certificate of Ambassador—Russian Imperial Family—Testamentary Disability — Property in England—Grant to Attorney.

By the law of Russia all testamentary instruments executed by members of the Imperial family are disregarded, and the disposition of the property of such persons after their death is within the exclusive power of the Emperor of Russia.

A, a member of the Russian Imperial family, died in Russia, having executed a will by which he appointed B, his son, as his executor. After A's death a meeting of the members of his family was held, and an arrangement for the disposition of his property in accordance with the terms of his will was agreed to, and was embodied in a document termed an "Acte Définitif," which was subsequently confirmed by the Emperor of Russia; and by the terms of the "Acte Définitif" B was constituted the sole and entire owner of certain shares held by the deceased in a railway company having its offices in England.

The Court, upon a certificate from the Russian ambassador in England, with the seal of the Russian embassy, reciting that the law of Russia is as stated above, and that, under the "Acte Définitif," B was the sole and entire owner of the railway shares, made a grant to the attorney of B of letters of administration with the "Acte Définitif" annexed, limited to the property of the deceased in England.

His Highness Prince Peter Georgevitch Oldenburg died at St. Petersburg on the 14th of May, 1881, having by a will appointed his son Prince Petrovitch Oldenburg as his executor.

The deceased was the son of Prince George Oldenburg, and was a member of the Russian Imperial family, his mother, the Grand Duchess Catherine Paulowna, having been sister to the Emperors Alexander I. and Nicholas I.

By the Russian law a will executed by a member of the Imperial family is disregarded, and the disposition of the estate of every such person after his death is in the exclusive power of the Emperor of Russia.

After the death of the deceased a meeting of the members of his family was held, and an arrangement for the disposition of his property on the basis of his will was agreed to, and was on the 17th of March, 1882, embodied in a document termed an *Acte Définitif*, which was on the 29th of March, 1882, confirmed by the Emperor Alexander III.

The deceased was possessed of 1,975 shares in the Dunaberg Vitesk Railway Company, which has its offices in England.

From a certificate signed by Count Vorontsoff Dashkoff, Minister of the Imperial Household and Appanages in Russia, it appeared that, according to the law of Russia and by virtue of the *Acte Définitif* above referred to, Prince Petrovitch Oldenburg was the sole and entire owner of the said railway shares.

From a certificate signed by the Russian ambassador in England, and bearing the seal of the Russian legation, it appeared that the effect of the Russian law with reference to the disposition of the estates of members of the Imperial family is as above stated, and that Prince Petrovitch Oldenburg was under the *Acte Définitif* the sole and entire owner of the said shares.

R. A. Pritchard (with him *Searle*) moved for a grant of letters of administration to Paul Solovieff, as attorney in England of Prince Petrovitch Oldenburg, limited to the property of the deceased in this

In the goods of Prince Peter Georgevitch Oldenburg, Prob.

country. *In the goods of Klingeman* (1) shews that the certificate of the ambassador in England of a foreign country, bearing the seal of the legation, is admissible to prove the law of such country.

BUTT, J.—I am satisfied with the evidence, and I shall make a grant of administration, with the *Acte Définitif* annexed, to the attorney of Prince Petrovitch Oldenburg, limited to the property of the deceased in England.

Solicitors—Arnold & Henry White.

PROBATE. 1884. May 20. *In the goods of* DONNA MARIA DEL CARMEN VEA MURGUIA.

Administration—Will annexed—Grant to Attorney of Executor—Death of Executor—Chain of Representation—Administration de bonis non.

A obtained a grant of administration with a foreign will annexed as the attorney in England of B, the executor of C, the testatrix. After B's death a similar grant was made to D as the attorney in England of A's executors:—Held, *that the chain of representation was not broken by the grant of administration to the attorney of the original testatrix, and that D was entitled to deal with the property of C in this country without a grant of administration de bonis non.*

Donna Maria Del Carmen Vea Murguia, wife of Don Felipe Vea Murguia, died at Cadiz on the 29th of June, 1876.

The deceased, who was a Spanish subject and had her domicil in Spain, had on the 11th of April, 1867, executed a valid will in the Spanish form and in the Spanish language, whereby she appointed her husband her sole executor. Probate of this will was duly granted by a Spanish Court.

The deceased was possessed of the sum of 5,305*l.* 16*s.* in Consols, standing in her name in the books of the Bank of England.

On the 13th of December, 1877, letters of administration with the will annexed were granted to Neville Lubbock, as attorney in England of Don Felipe Vea Murguia, for the use and benefit of the latter.

Don Felipe Vea Murguia died on the 11th of April, 1883, having on the 7th of August, 1876, executed a Spanish will, whereby he appointed as his executors Don Alejandro Vea Murguia and Don Clemente De Ermeneta, who in due course obtained probate of the will in Spain.

On the 5th of March, 1884, letters of administration with the will of Don Felipe Vea Murguia annexed were granted to Frederick Lubbock, as attorney in England of the executors, for the use and benefit of the executors.

The Consols were still standing in the name of Donna Maria Del Carmen Vea Murguia, and the authorities of the Bank of England had refused to transfer the stock without a grant of administration *de bonis non* of the estate of the original testatrix.

Bayford moved for a grant of administration *de bonis non* of the wife's estate to the husband's executors or their attorney. *In the goods of Bayard* (1) seems to shew that the present application is unnecessary.

BUTT, J.—I am bound by the decision of Sir Herbert Jenner Fust in *In the goods of Bayard* (1). A grant to the attorney of an executor does not break the chain of representation. The person having the administration of the husband's estate in this country is therefore entitled to deal with the fund, and a grant *de bonis non* is not required.

Solicitors—Simpson & Cullingford.

(1) 3 Sw. & Tr. 18; 32 Law J. Rep. P., M. & A. 16.

(1) 1 Robert. 768.

PROBATE. 1884. Feb. 26. } *In the goods of* MARY FRANCES LLOYD.

Administration — Will annexed — Universal Legatee—Power of Appointment—Real Estate—Conversion.

A married woman, having under the will of A a power of appointment by will over real estate, executed a will whereby she appointed all her real estate in favour of her husband absolutely, but she named no executor. She died without issue, and she left no separate property other than that which was the subject of the power. After the date of the will the husband and wife had presented a petition to the Court of Chancery under the Settled Estates Acts for the sale of the real property passing under the will of A. The property was sold, and, by order of the Court, the proceeds of the sale were invested in Consols in the names of the husband and of his co-trustee under the will of A:—Held, *that the proceeds of the sale could not be treated as personal estate, and that the husband was not entitled to a grant of administration with the will annexed, as universal legatee of his wife.*

Mary Frances Lloyd, wife of Francis Lloyd, of Lindridge, Devonshire, died on the 2nd of January, 1884, having on the 24th of November, 1874, duly executed a will in exercise of a power of appointment over real estate conferred upon her by the will bearing date the 12th of March, 1872, of her uncle James Sewell.

The deceased, by her will, appointed all her real estate to her husband absolutely, but she appointed no executor, and she disposed of no personal property.

The deceased left no issue, and she was not at the time of her death possessed of any personal property, but she had in 1875, in conjunction with her husband, presented a petition to the Court of Chancery under the Settled Estates Acts for the sale of the real property to which she had become entitled under the will of James Sewell, there being no power of sale contained in his will.

The property was afterwards sold, and the proceeds of the sale were, under the order of the Court, invested in Consols in the names of Francis Lloyd and Joseph Sewell, as trustees under the will of James Sewell.

Middleton moved for a grant of letters of administration with the will annexed to Francis Lloyd, as universal legatee of his wife.—The proceeds of the sale, though liable to be converted into realty, are at present personal property.

BUTT, J.—The property in respect of which the grant is asked for is realty converted into personalty, to be again converted into realty. I cannot treat it as personalty so as to give the Court jurisdiction to make a grant of administration with the will annexed.

Solicitors—Ayrton & Biscoe, agents for Sale, Seddon & Co., Manchester.

DIVORCE. 1884. March 18. } OPPENHEIM *v.* OPPENHEIM AND RICOTTI.

Settlements, Variation of—Appointment of New Trustees—Joint Power—Extinguishment—Jurisdiction.

Upon a petition for variation of settlements after a dissolution of marriage the Court has jurisdiction to extinguish a joint power to appoint new trustees.

In this case the petitioner had obtained a decree for the dissolution of his marriage, on the ground of his wife's adultery with the co-respondent.

The petitioner afterwards presented a petition for variation of settlements, and from the Registrar's report it appeared that, by indentures bearing date respectively the 2nd of July, 1867, and the 27th of July, 1874, certain property was settled for the benefit of the respondent and other persons, with a joint power to the petitioner and the respondent to appoint new trustees. Only one child of the marriage was living.

By an act of separation, made in the Italian form, and bearing date the 25th of

February, 1874, the petitioner agreed to leave to the respondent her marriage portion, and also to pay her a monthly allowance.

The Registrar, in his report, proposed that the trustees for the time being of the indentures of settlement should stand possessed of the settled property, and apply the same upon the same trusts, and subject to such powers, declarations and provisions as would be applicable in case the respondent had died during the lifetime of the petitioner, and that the respondent's rights under the act of separation should be entirely extinguished.

The surviving trustee was desirous of being discharged from the trusts, and the respondent having declined to join in the appointment of a new trustee, he desired that a new trustee should be appointed by the Court, or by the husband alone.

Middleton, for the petitioner, moved to confirm the Registrar's report, and for an order extinguishing the joint power to appoint new trustees. He referred to the Matrimonial Causes Act, 1859, s. 5 (1), *Davies* v. *Davies and M'Carthy* (2), *Hope* v. *Hope and Erdody* (3) and *Maudslay* v. *Maudslay* (4).

Phillimore, for the trustee.

The respondent was not represented.

BUTT, J.—The words of the statute are wide enough to give me jurisdiction to make the order asked for, and the case of *Davies* v. *Davies and M'Carthy* (2) is not an authority to the contrary. In *Maudslay* v. *Maudslay* (4) such an order was made by consent, and here there is no opposition. I therefore grant the application.

Solicitors—S. Spofforth, for petitioner; Linklaters & Co., for respondent; Waltons, Bubb & Walton, for trustee.

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(1) 22 & 23 Vict. c. 65.
(2) 37 Law J. Rep. Prob. & M. 17.
(3) 44 Law J. Rep. Prob. & M. 31; Law Rep. 3 P. & D. 226.
(4) 47 Law J. Rep. P., D. & A. 26; Law Rep. 2 P. D. 256.

[IN THE COURT OF APPEAL.]

PROBATE. 1884. Feb. 8, 27. } *In re* SANDERSON. WRIGHT *v.* SANDERSON. *

Will — Execution — Attestation — Presence of Attesting Witnesses during Signature by Testator—Wills Act.

Where a will is ex facie duly executed, there being no suggestion of fraud, probate ought not to be refused merely because the attesting witnesses cannot, when examined, recollect either having seen the testator sign the document or that his signature was there before they signed, and did not know the nature of the document which they were signing.

This was an appeal from a decision of Sir James Hannen granting probate of a codicil to the will of Alfred Sanderson. The material facts are fully stated in the judgment of the Lord Chancellor.

Inderwick, Q.C., and *Bayford*, for the appellant.

Searle, for the respondents.

The following cases were referred to in addition to those mentioned by the Lord Chancellor in his judgment—*Croft* v. *Croft* (1) and *Keigwin* v. *Keigwin* (2).

Cur. adv. vult.

THE LORD CHANCELLOR (EARL OF SELBORNE) (Feb. 27).—This is an appeal from an order of the President of the Probate Division, pronouncing for the validity of a codicil, dated the 25th of July, 1878, to the will (dated the 12th of September, 1868) of Alfred Sanderson, who died on the 18th of December, 1881.

The ground alleged for the appeal is that the signature, or acknowledgment of the signature, of the deceased in the presence of the attesting witnesses is either disproved or not sufficiently established.

The case, though necessarily depending upon its own circumstances, is of much general importance. The testator was a paint and colour manufacturer at Hull.

* *Coram* Earl Selborne, L.C.; Cotton, L.J., and Fry, L.J.

(1) 4 Sw. & Tr. 10; 34 Law J. Rep. P., M. & A. 44.
(2) 3 Curt. 607.

In re Sanderson (App.), Prob.

His will of 1868 had been made for him by a solicitor named Middlemiss, and was duly attested by that gentleman and one of his clerks, both at the end, after an attestation clause in the ordinary form, "Signed and declared by the said Alfred Sanderson, the testator, as and for his last will and testament, in the presence of us," &c., and also at the foot of each of the preceding sheets, which were all signed, in the right corner by the testator, and in the left corner by the witnesses—the word "witness" preceding the signature of the witnesses. During the interval of nearly ten years between the dates of the two instruments, the testator had increased his fortune by about 70,000*l.*; and, although there was a residuary disposition in the will of 1868 (subject, perhaps, to some questions in the event of his wife marrying again), he thought it right to make a distinct and special provision as to this large accretion to his estate, and to give it to his wife and children, for interests in some respects different from those which they would take under the will. For this purpose he prepared and wrote a holograph codicil, commencing on the lower half of the same sheet of paper on which was the signature and attestation to the will, and carried over to and ending upon the fly or blank sheet which followed it. He copied the attestation clause of the will on the left side of the concluding page opposite the place for his own signature, with the substitution of the words "as and to be a codicil to his last will and testament" for "as and to be his last will," &c., and with the addition, after the words "have hereunto subscribed our names as witnesses," of the date "this twenty-fifth day of July, one thousand eight hundred and seventy-eight." He also wrote the word "witness" at the foot, and in the left corner of the preceding page, evidently with a view to the signature and attestation of that page, in the same manner in which the several sheets of the will of 1868, which preceded the last, had been signed and attested. This codicil, as propounded for probate, bears the signature of the testator, "Alfred Sanderson" (with the date, "25th of July, 1878," below it), in the usual place, to the right of the attestation clause, corresponding with the place of the final signature to the will; and immediately below the attestation clause are the signatures of the two witnesses, Mary Alma Sowarsby and Mary Ann North, also in the usual place, like the signatures of the attesting witnesses to the will. At the foot of the preceding page there is also (in the right corner) the signature of the testator, and in the left corner, immediately after the word "witness," are the signatures of the same two attesting witnesses. Of the genuineness of these signatures, both of the testator and of the witnesses, there is no question; nor can there, in my opinion, be any question, either as to the intention of the testator to make a valid and effectual codicil to his will, or of his knowledge (though he was not a lawyer) of what was legally necessary for that purpose.

The indubitable facts of the case, including all that appears *ex facie* of the instrument, are therefore (as far as they go) in favour of this codicil; and I cannot think that the presumptions in its favour (so far as presumptions ought to have weight) are appreciably less than they were in the cases of *Lloyd* v. *Roberts* (3), before the Judicial Committee of the Privy Council, *Blake* v. *Knight* (4), *Cooper* v. *Bockett* (5), *Leech* v. *Bates* (6) and *Burgoyne* v. *Showler* (7); also *Gwillim* v. *Gwillim* (8), decided by Sir C. Cresswell in 1859—as to which case I agree with what was said by the late Master of the Rolls in *Blake* v. *Blake* (9), and do not regard its authority as shaken.

The first point to consider is (said Sir Herbert Jenner Fust in *Blake* v. *Knight* (4)), is it absolutely necessary to have positive affirmative testimony by the subscribed witnesses that the will was actually signed in their presence or actually acknowledged in their presence? Is it absolutely necessary, under all circumstances, that the witnesses should

(3) 12 Moore P.C. 158.
(4) 3 Curt. 547.
(5) 3 Curt. 648; 4 Moore P.C. 419.
(6) 6 Notes of Cases, 704; 1 Robert. 714.
(7) 1 Robert. 12, 13.
(8) 3 Sw. & Tr. 200; 29 Law J. Rep. P., M. & A. 31.
(9) 51 Law J. Rep. P., D. & A. 36

concur in stating that these facts took place? Or is it absolutely necessary, where the witnesses will not swear positively, that the Court should pronounce against the validity of the will? I think these are not absolute requisites to the validity of a will. I think the Court must take into consideration all the circumstances of the case, and judge from them collectively whether there was not at least an acknowledgment of a signature already existing on the face of the will at the time of attestation." Then, after referring to the evidence in that case, he observed that the testator "must have known how to give validity to a testamentary paper in the year 1838. No doubt, the memory of the witnesses fails them with reference to circumstances happening nearly four years ago. The Court cannot safely trust to the memory of witnesses under such circumstances; it must attend to the facts of the case, and say whether it is satisfied that the name of the deceased was written to the will when the witnesses signed it; whether it was signed in their presence, or signed beforehand and acknowledged in their presence."

In *Cooper* v. *Bockett* (5) the evidence was given within only a few months of the attestation; but the same learned Judge, on the same principles, disregarded it, saying, "Where the *res gestæ* do not confirm the impressions of the witnesses, the Court must look at the circumstances of the case, as it is always at liberty to do." That decision was confirmed by the Queen in Council, and among the circumstances which the Lords of the Judicial Committee (in their judgment delivered by Vice-Chancellor Knight-Bruce) thought entitled to weight was the balance of reasonable probability. One of the attesting witnesses, the testator's porter, had deposed positively and circumstantially that he saw the testator, Captain Cooper, subscribe his name to the will after both the witnesses had signed; and the other, the porter's wife, though speaking less positively, had said, "I cannot say that Captain Cooper's name was to the will when I signed it; as well as I can now remember, it was all blank where I now see Captain Cooper's signature." Their Lordships, pronouncing (as Sir H. Jenner Fust had done) for the will, said, "It is not to be forgotten that fraud is out of the question; that Captain Cooper certainly intended the instrument to be his will—intended it to be effectual as his will; that he knew, or believed, his own signature to the paper to be essential, or advisable and desirable at least; that the purpose for which and the object with which he summoned these two servants to his room was merely to substantiate the instrument as his will; that, if they have not attested it effectually, their presence, their signatures and the whole transaction was idle and useless, and the intended testator's design and wishes have been absolutely and irremediably frustrated. It is the duty of a Court of justice not to allow undue weight to these considerations. It seems equally their duty not wholly to lose sight of them. Their Lordships have next to consider whether, independently of them, the supposed fact stated by the porter is or is not in its nature improbable. Their Lordships think it in its nature very improbable; they think that it is not according to the general notions or habits of men of the world, or well-educated or well-informed persons, whether professional or non-professional, to have a document which requires a party's signature attested or subscribed by a witness before its signature by the party, and for the party to sign it afterwards. It appears to their Lordships that such a course is neither businesslike nor customary; and that it does not need that a man should be a lawyer or a merchant to be startled by such a mode of proceeding. Their Lordships find themselves unable to think it consistent with probability that Captain Cooper, on the occasion in question, could have acted or allowed the witnesses to act, or could have been capable of acting or allowing them to act, in such a manner; not that it is their opinion that he was fully aware or accurately informed of the legal formalities or ceremonies essential to the sufficient execution or attestation of a will."

The reasons stated by Dr. Lushington for the decision of the Judicial Committee in *Lloyd* v. *Roberts* (3) proceed upon the same principles, and upon the presump-

tion in favour of the due execution of a holograph will on the face of which everything is regular, and where there is no question of fraud. In the present case (as in others of the same kind) there is neither any suspicion of fraud nor any ground for calling in question the integrity of the witnesses. They gave their evidence between four and five years after the date of the transaction, a distance of time after which (as in *Blake* v. *Knight* (4)) it might reasonably be expected that their recollection would be imperfect. Miss Sowarsby was a nursery governess and Mary Ann North a nurse in the testator's service. The nurse says that the testator came to her on the 25th of July, 1878, when she was in the night nursery, having a paper in his hand, of which she then took no further notice, saying, "Nurse, I want you;" and she went with him to the schoolroom. The statement of the nursery governess as to what passed there is that she remembers the testator coming into the schoolroom between eleven and twelve o'clock in the morning of the 25th of July, 1878, with Mary Ann North. He had a paper in his hand, which he put upon the schoolroom table, where there was ink and also pens; but she thinks he brought his own pen with him, and that this was the pen which she used. He first requested Mary Ann North to sign the paper, and he requested herself to do the same, saying, "Miss Sowarsby, will you sign this paper?" The nurse asked her to do it first, "and," she says, "I signed my name to the paper, not knowing what I was signing." She "does not remember clearly whether it was open or folded;" she saw nothing of the paper, but she "thinks it was open." Asked, "Did you see any writing at all on the paper when you wrote your name?" she answered, "I did not notice any writing at all; I purposely avoided seeing anything on principle, as I should avoid looking at a letter." Asked again whether she "may not have been able to see whether there was anything written," she answered, "Yes, I noticed some writing." Then being shewn the codicil, and asked again, "What writing did you notice there?" she says, "Nothing particular; no writing in particular; I do not remember what I noticed; I took no particular notice." Having her attention called to her own two signatures, the one after the attestation clause and the other at the foot of the preceding page, she says (as I understand her) that she cannot remember clearly which she signed first; nor can she remember whether she signed in both places before Mary Ann North signed in either. Being asked, "Was your signing your name the first writing you saw done in the room?" she answered, "Yes." When she had made the last signature, she says, "I turned to Mr. Sanderson, who was standing at my back, and remarked that I did not know at all what I had been signing; it might have been my own death warrant. Mr. Sanderson laughed, but he did not enlighten me at all," explaining directly afterwards that this was said "in a joke." She did not notice particularly Mary Ann North signing; she knew that she was signing, but did not notice whether she used the same pen. After both had signed the testator left the room, taking the paper with him; she does not think he said anything which she has not mentioned; she has mentioned all that she remembers. Her examination in chief closed with the following questions and answers, which appear to me to be important:—"If you look at it now, you see Mr. Sanderson's signature there and the date?"—"Yes." "Can you say whether or not that was there when you signed?"—"I cannot say one way or the other." "You cannot say that it was or that it was not there?"—"No." "You know the writing. The whole of this is his writing, is it not?"—"Yes." The material parts of her cross-examination are the two first questions and answers. "You say you do not know whether his signature was there or not?"—"Yes; I do not know." "Did you see Mr. Sanderson write his name there?"—"No." In answer to questions from the learned Judge, she said that both the testator, Mary Ann North and herself were standing the whole time; that although she does not usually write standing, she did so on this occasion; that she does not remember who dipped the pen into the ink, or whether the testator did so for herself or for the nurse; that she "really does not remember" whether she signed

with the pen which the testator brought in; but "supposes" she "should do so." Being asked, "In fact, beyond what you have said, you do not remember anything?" she answered finally, "No; I do not. I took no notice whatever at the time of what I was doing beyond signing my name. On principle, I avoided seeing what it was." The nurse remembers even less. "He asked me," she says, "to sign and Miss Sowarsby to sign, and I turned to Miss Sowarsby and said, 'Miss Sowarsby, will you sign first?' She did, and then afterwards I signed, I wrote my name." In answer to a question from the learned Judge as to her reason for not signing first, when first asked, she said, "I am such a bad writer, and I did not think I could write my name: so I thought if Miss Sowarsby could do hers first, I could try." The paper was on the table: she does not know who put it there.—"Did not see Mr. Sanderson do so. I did not take any notice of what he was doing; I stood back." She did not notice whether the paper was stretched out or folded up on the table; she saw Miss Sowarsby sign, and she herself signed afterwards, using the same pen. She did not see whether Mr. Sanderson had a pen. Being shewn her own two signatures, she says she does not know which she signed first—"I did not take any notice of what I was doing." She saw no writing on the paper—"I never saw any writing at all; I just put my name near Miss Sowarsby's." She was asked, "Did you see any writing when you first put your name there?"—"No." "Could you have put your name there without seeing it, do you think?"—"I never noticed any." "Did you look?"—"No; I did not." "On the second page, did you see any writing there?"—"Nowhere." "Can you say whether there was any writing there or not, one way or the other?"—"I never saw any; I never noticed any." She thinks the testator took the paper out of the room with him, but does not remember. She heard what Miss Sowarsby said about her death warrant, at which the testator laughed. In cross-examination, she said she did not know what it was she was signing. "Did you see Mr. Sanderson write his name?"—"No." "You are quite sure of that?"—"I am sure." "You see his name written large there, with the date underneath it?"—"Yes." "Did you see that on the paper at the time that you signed it?"—"No; I did not." "As far as I gather from you, you did not take any notice of the paper at all?"—"No; I did not. I did not know what I was doing; I did not know what I was going to do." Being asked by the learned Judge, "You still say that you did not see anything written on the paper?" she replied, "I did not see anything;" and to another question she said that she never had "to take part in such a business" before.

This is the whole evidence; and upon that evidence I cannot myself hesitate to come to the conclusion that the name of the testator had certainly been signed to this codicil in both the places in which it now appears, before either of the two witnesses (who unquestionably signed in his presence and in the presence of each other) attested either of those signatures. The testator's signature, if there at the time, was patent and obvious; not only it might have been seen, but (unless the witnesses had purposely abstained from looking) it must have been seen by them in both places. It was not hidden, or folded, or covered up in any way; and the date, "July 25, 1878" (which is admitted to have been the actual date of the attestation), appears both below the principal signature of the testator and at the end of the attestation clause in his handwriting. It is impossible, to my mind, to doubt that both the witnesses knew they were asked to witness, and were witnessing, something, though the testator only asked them to "sign," and may not have uttered the word "attest" or "witness," or said that the paper was his will or a codicil to his will. If they did not look at the attestation clause, the word "witness" immediately preceding their signatures on the preceding page could not have been invisible to them.

It is to me plain that all the difficulty in this case has arisen from the excessive scrupulousness of the one witness about using her eyes at all upon such an occasion, and from the nervous pre-occupation of the other, who doubted her ability to sign her own name, and cannot remember having

seen any writing whatever upon the paper. I agree with the learned President that by far the most probable and reasonable conclusion is that the testator, when he placed the codicil upon the table, then and there signed it, with the pen which he held in his hand. For what other purpose should he carry his own pen with him through the house into a room where he must have known there would be pens as well as ink? The witnesses say that they did not see him write, but it is clear that they did not take much notice of what he did when the paper was first laid on the table, and if he signed in their presence that would be enough. I do not, under these circumstances, think it necessary to say anything about the alternative case of acknowledgment, which that very learned and experienced Judge considered not to arise.

If it had been necessary to do so, I should have desired carefully to consider the effect of the authorities. The principle which Dr. Lushington, in *Burgoyne* v. *Showler* (7), stated to have been that on which Sir Herbert Jenner Fust always acted, in the absence of sufficient recollection on the part of the witnesses, was that he would presume the will to be duly executed; and the same learned Judge (Sir H. J. Fust), in *Leech* v. *Bates* (6), justly and reasonably held that the accuracy of the recollection of the witnesses on some points might properly be tested by the inaccuracy or imperfection of their memory on others. In that case, as also in *Blake* v. *Knight* (4), *Cooper* v. *Bockett* (5) and *Lloyd* v. *Roberts* (3), stronger and more positive evidence than any which exists in this against the due execution and attestation of the paper was —without imputation on the honesty of the witnesses—disregarded as untrustworthy, in comparison with the inferences reasonably derivable from the *evidentia rei*, the undisputed facts, and the probabilities of the case.

I observe that the very learned President, in the judgment appealed from, has stated that there have been many cases, within his own experience, in which, upon evidence substantially similar, he has pronounced in favour of wills, although the witnesses (being credible and respectable persons) have stated that they did not see the testator sign. I do not know how many wills, really well executed and duly attested, might not be brought into peril if, upon the sort of evidence which we have here, after the lapse of several years, probate were refused.

My opinion is that the present appeal ought to be dismissed. The costs of both parties may be paid out of the estate.

Cotton, L.J.—The question is, whether the signature of the testator to the document which has been propounded for probate as a codicil was made or acknowledged by him in the presence of the two attesting witnesses. This is a question of fact, and, in deciding it, not only the presumptions properly applicable, but also the evidence must be considered. The document propounded bears the signatures of the testator and of two witnesses, and an attestation clause, which represents that the document was signed and declared as a codicil to his will by the testator in the presence of the two witnesses. If the attesting witnesses were both dead, then, on proof of their handwriting, the codicil would, if there was no other evidence, be admitted to probate, not only on the presumption *omnia rite acta esse*, but in consequence of the presumption that what was stated, in the clause immediately above the signature of the witnesses, to have been done in their presence, had, in fact, been so done. But these presumptions must yield to evidence of fact, and here we have the evidence of the attesting witnesses. If their evidence is, on its fair interpretation, that they cannot remember what took place, that will not rebut the presumption in favour of the due execution and attestation. On the note of their evidence which is before us, that is not, in my opinion, the true result of their evidence. Both state positively that they did not see the attestation clause, and if they had done so it would have been impossible that the governess, who was one of the witnesses, should have used the expression, spoken to by both witnesses, as to not knowing what she had signed. Each gives what seems to be a somewhat minute account of what took place, and though one of them could not recollect that she had signed her name in two places,

as, in fact, she had done, the circumstance of twice signing her name is, in my opinion, more likely to escape the memory than seeing another person sign—if, in fact, he did so—and does not lead me to treat as inaccurate the account of the transaction given by the witnesses, which is, if accurate, in my opinion, inconsistent with the testator having signed after he brought the document and the nurse into the room where the other witness, the governess, was.. Each of the witnesses says distinctly that she did not see Mr. Sanderson sign. It was very properly pressed upon us that the attestation clause was written by the testator himself, and that it is improbable that he should not have taken care to do and to have done that which the attestation clause copied by himself shewed to be necessary, and that this was especially conclusive inasmuch as he was a capable man of business. He may have been, and probably was a good man in his own business, but certainly he was not skilled in law, as the codicil itself shews. I am, therefore, not much influenced by the fact of the attestation clause having been written by the testator; and if I had had to decide on the evidence as it appears before us, I should have come to the conclusion that the testator did not sign the document in the presence of the witnesses. But the Judge in the Court below has found as a fact that he did so sign it, and that the recollection of the witnesses was imperfect. He had materials for forming this opinion which I have not. For certainly the mode in which the witnesses gave their evidence would materially assist me in forming an opinion whether their accuracy and recollection could be relied upon.

I think, therefore, especially having regard to the principles on which the Court always acts in appeals as to questions of fact, I cannot properly overrule the decision of the Judge, who had materials for the purpose of forming his opinion which I have not, and that this appeal fails. This renders it unnecessary to consider whether there was an acknowledgment of the signature in the presence of witnesses. But I in no way differ from the opinion of Sir James Hannen on this question.

FRY, L.J.—I can in very few words express my concurrence in the conclusion expressed in the judgment of the Lord Chancellor that the codicil of the testator in this case was duly executed and attested. The codicil propounded was *ex facie* perfectly regular as regards all the formalities of signature and attestation. The presumption *omnia rite esse acta*, therefore, applies to the codicil. But the conduct of the testator, both in the preparation of the codicil and in the calling together of his witnesses, shewed an anxious and intelligent desire to do everything regularly. That fact strengthens the presumption, and it is not, in my opinion, rebutted by the evidence of the two witnesses, who thought that the testator did not sign in their presence, for these witnesses were somewhat nervous and flurried on the occasion, and were accordingly confused and forgetful in the witness-box. They were witnesses about whose honesty the learned President entertained no doubt, but on whom he, who saw and heard them, felt that he could not rely to rebut the presumption which arose from the admitted facts of the case.

The decisions cited in argument and referred to by the Lord Chancellor shewed that the Judges who have presided over the Court of Probate had been accustomed to give great weight to the presumption of due execution arising from the regularity *ex facie* of the testamentary paper produced when no suspicion of fraud has occurred. In so doing, they have, in my opinion, acted rightly and wisely. In the present case my conclusion is that the codicil was duly signed by the testator in the presence of the two witnesses, and consequently that the appeal must be dismissed.

Solicitors—Cunliffe, Beaumont & Davenport, agents for Middlemiss & Pearce, Hull, for appellants; Brooks, Jenkins & Co., agents for Middlemiss & Pearce, Hull, for respondents.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. May 1. } THE NOTTING HILL.*

Damages, Measure of—Collision—Delay in Delivery of Cargo—Loss of Market—Tort.

The plaintiffs shipped a cargo of maize on board the C., which was run into by the defendants' ship while in port at G. on a voyage to London, in consequence of which a portion of the cargo which was damaged, together with so much of the sound cargo as was necessary, was discharged to lighten the C. The sound portion of the cargo was subsequently reshipped, and arrived in London later than it otherwise would have done. The market price of maize had in the meantime fallen:—Held, *that the plaintiffs were not entitled in an action of tort to recover damages from the defendants for the loss of market sustained by them in consequence of the delay in the arrival of the cargo caused by the collision with the defendants' ship.*

The Parana (45 Law J. Rep. P., D. & A. 108) *followed.*

Appeal, by the owners of a cargo of maize shipped on board the ship *Clymene*, from a judgment of Sir J. Hannen overruling objections to the Registrar's report.

In November, 1882, the *Clymene*, while lying alongside a hulk at Gibraltar, was run into and damaged by the steamship *Notting Hill*. Part of the cargo was damaged, and the portion so damaged was discharged into lighters, with so much of the sound cargo as was necessary to lighten the ship. The dry portion of the cargo was subsequently reshipped, and the ship proceeded on her voyage to London, where she arrived in January, 1883. The market price of maize had fallen in December, 1882, and the plaintiffs, who were the owners of the cargo of maize, sustained a loss when it was sold in January.

The Registrar and merchants refused to allow the plaintiffs' claim against the owners of the *Notting Hill* for damages for loss of market actually sustained by them in consequence of the collision.

Sir J. Hannen overruled an objection to the report of the Registrar, upon the ground that he was bound by *The Parana* (1).

The plaintiffs appealed.

Aspinall (with him *Lush Wilson* and *Nelson*), for the plaintiffs.—The present case is distinguishable from *The Parana* (1), for that was an action for breach of contract, whereas the present is one of tort. The measure of damages is the market price of the goods upon the day of the collision—*France* v. *Gaudet* (2) *O'Hanlan* v. *The Great Western Railway Company* (3), *The Star of India* (4) and *The Consett* (5).

Phillimore and *Gorell Barnes*, for the owners of the *Notting Hill*, were not called upon.

BRETT, M.R.—The only question which we have to decide is whether the damages which are claimed for delay in the arrival of the goods are too remote.

The rule with regard to a question of remoteness of damages is, as I understand it, precisely the same whether the damages are claimed in respect of a breach of contract or in respect of a tort. In *Mayne on Damages* (6), after the principles by which the assessment of damages is governed have been examined, it is said, "We have next to enquire what grounds of damage will in no case be admissible. These grounds may be classed under the general head of remoteness. Damage is said to be remote when, although arising out of a cause of action, it does not immediately and necessarily flow from it as that the offending party can be made responsible for it"; and then it is stated that "the first and, in fact, only enquiry in all these cases is whether the damage

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

(1) 45 Law J. Rep. P., D.& A. 108; Law Rep. 2 P. D. 118.

(2) 40 Law J. Rep. Q.B. 121; Law Rep. 6 Q.B. 199.

(3) 6 B. & S. 484; 24 Law J. Rep. Q.B. 154.

(4) 45 Law J. Rep. P., D. & A. 102; Law Rep. 1 P. D. 466.

(5) 49 Law J. Rep. P., D. & A. 24; Law Rep. 5 P. D. 229.

(6) 3rd ed., at p. 39.

complained of is the natural and reasonable result of the defendant's act; it will assume this character if it can be shewn to be such a consequence as in the ordinary course of things would flow from the act, or in cases of contract if it appears to have been contemplated by both parties." The latter part of that is merely a repetition of the phrase in *Hadley* v. *Baxendale* (7), which was there applied to the case of a carrier who had received notice of the contract which made the delivery of the goods within a certain time an essential part of the contract. Here that rule has to be applied to an action of tort, where the question is whether the damages claimed are too remote. That very point was carefully considered by the Court of Appeal in the case of *The Parana* (1), where the question was as to the application of the rule of what was the reasonable and natural consequences of a collision at sea to a case of loss of market by delay. It was there said by Lord Justice Mellish that loss of market did not come within the rule so that the plaintiff would be entitled to the difference between the market price of the goods when they arrived and their price when they ought to have arrived, for that was so uncertain and precarious that it could not be said to be the natural and reasonable result of the act of collision at sea, and therefore the loss of market caused by the delay by collision at sea was too remote as a head of damages. That case is an absolutely binding authority upon us. I do not venture, nor wish, to say that if I had had to decide that case I should have decided it otherwise; neither can I see any difference between that case and the principles to be applied here. The damages there were no doubt claimed for breach of contract, whereas here the question arises in an action of tort. But from the passage in *Mayne on Damages* (6), which is founded upon *Hadley* v. *Baxendale* (7), I can see no difference, upon a question of remoteness of damage, between an action for breach of contract and an action of tort. The point as to the market value of the goods upon the day of the collision cannot be sustained, because no damage has been done which has not been allowed for, except the damage arising out of the delay in the arrival of the goods, and that did not occur upon the day of the collision, and does not therefore come within the rule as to the measure of damages.

(7) 9 Exch. Rep. 341; 23 Law J. Rep. Exch. 179.

BOWEN, L.J. — I am of the same opinion.

FRY, L.J.—I am of the same opinion. I consider myself bound by the case of *The Parana* (1).

Appeal dismissed.

Solicitors — Lowless & Co., for plaintiffs; Stokes, Saunders & Stokes, agents for Hill, Dickinson & Lightbound, Liverpool, for defendants.

PROBATE. 1884. Feb. 26. } *In the goods of* WILLIAM GEORGE SMART.

Probate—Limited Grant—English Will —Foreign Will.

The testator executed a will in England, by which he disposed exclusively of English property. He afterwards executed in the Argentine Republic a will in the Spanish language, and valid according to the law of the Argentine Republic, by which he disposed of property in that Republic and cancelled all previous dispositions. According to the law of the Argentine Republic, the Spanish will could affect only such property as was situated within the Republic.

The Court, on proof being given of the consent of all the parties interested, granted probate of the English will only.

William George Smart, civil engineer, died at Concordia, Entre Rios, in the Argentine Republic, on the 7th of October, 1883, leaving a widow and three daughters surviving him.

In the goods of William George Smart, Prob.

The domicil of the deceased was English, but he had been for over ten years resident at Concordia as engineer to the East Argentine Railway Company.

On the 3rd of February, 1877, while on a short visit to England, he executed a will whereby he appointed his three daughters his executrixes in England, and gave, devised and bequeathed to them "the whole of my property of whatsoever description of which I may die possessed," subject to the payment of an annuity of 100*l.* to his wife. He at the same time left with them a memorandum of his property, which referred exclusively to property in England.

On the 21st of February, 1883, the deceased, being then at Concordia, executed a will in the Spanish language and in accordance with the requirements of Spanish law. The last-mentioned will contained certain passages, of which the following is a translation:—"I calculate the value of the property I possess at the present date in this Republic at 8,000 dollars. . . . I appoint as executor of the said property William Weber, an inhabitant of the town of Monte Caseros, in the province of Corrientes, and it is my wish that as speedily as possible after my decease he shall proceed to pay the sums in which I am indebted, and then divide the remainder among my heirs in the proportion determined by the laws of the Argentine Republic. . . . This will has been from the first to the last written with my own hand and sealed with my seal, and it therefore cancels all previous dispositions."

An affidavit had been made by a Spanish advocate, stating that, in the opinion of the deponent, the Spanish will, according to the Spanish law prevailing within the Argentine Republic, affected only such property of the deceased as was situated in that Republic.

Both the wills of the deceased had been deposited in the principal registry of this Division.

Bayford, for the executrixes of the English will, moved for a grant of probate of that instrument, excluding all property situated within the Argentine Republic, and that the Spanish will might be given out of the registry, in order that probate of it might be obtained in the Argentine Republic.

THE PRESIDENT (SIR JAMES HANNEN).—I will grant the application, upon proof being given in the registry that all the parties interested have given their consents.

Solicitors—Ley & Lake, for all parties.

PROBATE. 1884. March 11; April 1. } PRIESTMAN *v.* THOMAS AND OTHERS.

Estoppel—Probate Action—Forgery of Will—Compromise obtained by Fraud—Setting aside—Revocation of Probate.

A compromise was agreed to in a probate action, and the will propounded by the defendants was admitted to probate. The plaintiff, who had propounded a later will, afterwards commenced a second action against the defendants in the Chancery Division, in which he claimed to have the judgment in the former action set aside on the ground that the compromise had been obtained by fraud and that the will propounded by the defendants was a forgery. The second action was transferred to the Queen's Bench Division, and at the trial the jury found that the compromise had been obtained by the fraud of one of the defendants, and that the will was a forgery. The Court entered judgment in accordance with the findings of the jury, and ordered the compromise to be set aside. The plaintiff then commenced a third action against the defendants for revocation of the probate of the will propounded by the defendants: —Held, *that the verdict and judgment in the second action were conclusive in the third action, and that the defendants were estopped from denying that the will propounded by them was a forgery.*

The statement of claim alleged, among other matters, that the plaintiff Henry

Priestman v. *Thomas, Prob.*

Whalley Priestman is the executor under a will, executed in the month of April, 1881, of James Whalley, who died at Leominster, Herefordshire, on the 7th of May, 1881; that in a former action brought by the plaintiff in this Division against Charles Thomas and Edward Gunnell, two of the present defendants, and other persons, the plaintiff had propounded the contents of the above-named will, which was not now in existence, and the said defendants had propounded an alleged will of the testator bearing date the 21st of March, 1881; that, by reason of the fraudulent misrepresentation of the said defendants, an agreement of compromise was arrived at, to which all the parties in the present action were parties, and the alleged will of the 21st of March was admitted to probate by the judgment of this Division bearing date the 10th of June, 1882; that the plaintiff, having discovered that the alleged will of the 21st of March, 1881, was a forgery, subsequently commenced an action in the Chancery Division against the defendants Thomas and Gunnell, to have the agreement of compromise in the earlier action set aside on the ground that such compromise had been procured by the fraudulent misrepresentation of the defendant Thomas that the alleged will of the 21st of April, 1881, was genuine, whereas in fact it was a forgery, and that the defendant Thomas was party or privy to such forgery; that the last-mentioned action was transferred to the Queen's Bench Division, and was tried before Manisty, J., and that on the 16th of November, 1883, the jury found that the compromise, so far as it related to the interest which the defendant Thomas took under it, was procured by his fraud, and that the alleged will of the 21st of March, 1881, was a forgery to which the defendant Thomas was party or privy; that the Court thereupon pronounced judgment in accordance with the findings of the jury, and ordered the compromise to be set aside, so far as it related to the defendant Thomas; and that no application had been made to set the verdict and judgment aside. The plaintiff claimed a declaration that the defendants Thomas and Gunnell are estopped from denying that the alleged will of the 21st of March, 1881, was a forgery to which the defendant Thomas was a party or privy; a declaration that the judgment pronounced by this Division in favour of the will of the 21st of March, 1881, was obtained by fraud; that such judgment might be set aside; and that the probate of the will of the 21st of April, 1881, might be revoked.

The statement of defence contained, among other things, a denial of the allegations in the statement of claim as to the compromise having been obtained by fraudulent misrepresentation and as to the will of the 21st of March, 1881, being a forgery. The defendants also denied that they were estopped from denying in the present action that the will of the 21st of March, 1881, was a forgery, and they claimed a right to have the issue whether such will was a forgery tried before another jury.

On the application of the plaintiff the Court had made an order, under Order XXV. rule 3, directing that the question of estoppel should be determined before the trial of the other issues in the action.

Russell, Q.C., and *Middleton*, for the plaintiff.—The judgment in the action brought in the Chancery Division estops the defendants in the present action from denying either that the compromise in the first action was obtained by fraud, or that the will of the 21st of March was forged.

[THE PRESIDENT.—The issue there was whether the compromise had been obtained by fraud, and the question of forgery was an incidental one.]

The only fraud alleged was the setting up of the forged will. In *Spencer* v. *Williams* (1), the question as to who were the next-of-kin of the deceased had been determined in a Chancery suit, and Lord Penzance said, "It is a principle which was clearly laid down in *Barrs* v. *Jackson* (2), that when a question of fact arises in this Court as to which of two persons is the next-of-kin of a deceased, and is determined, and the same

(1) 40 Law J. Rep. Prob. & M. 45; Law Rep. 2 P. & D. 230.

(2) 1 Phil. Chanc. 582.

question is afterwards raised in any other Court, they may be estopped from proceeding in the latter suit." *Barrs* v. *Jackson* (2) is the converse case to *Spencer* v. *Williams* (1). It was there held that a suit in Chancery was barred by the judgment of an Ecclesiastical Court in a suit between one of the parties to the Chancery suit and a party against whom the other party in that suit claimed. In order to ascertain whether the issue in two actions is the same, and whether there is an estoppel, it is necessary to look at the judgment as well as the pleadings in the earlier case, and the verdict alone will not decide the question — *Robinson* v. *Duleep Singh* (3). In *Alison's Case* (4), Mellish, L.J., said that it was clear that "the judgment is not only conclusive with reference to the actual matter decided, but that it is also conclusive with reference to the grounds of the decision, provided that from the judgment itself the actual grounds of the decision can be clearly discovered." *Flitters* v. *Allfrey* (5) also shews that the Court will look at the facts of the earlier case in order to ascertain what question was really determined. There the judgment of a County Court was treated as conclusive, and, there being no pleadings in the County Court, the Court examined the judgment to find out what the Judge had in fact determined. The former suit was brought in the proper form, for in *Flower* v. *Lloyd* (6) the Court of Appeal held that persons who have ascertained that a judgment was obtained by fraud must take an independent proceeding for the purpose of having it set aside. *Melhuish* v. *Milton* (7) shews that under section 34 of the Judicature Act, 1873 (8), revocation of the probate could not have been obtained in the action in the Chancery Division.

(3) 48 Law J. Rep. Chanc. 758; Law Rep. 11 Ch. D. 798.
(4) 43 Law J. Rep. Chanc. 11; Law Rep. 9 Chanc. 25.
(5) 44 Law J. Rep. C.P. 73; Law Rep. 10 C.P. 29.
(6) 45 Law J. Rep. Chanc. 746; Law Rep. 6 Ch. D. 297.
(7) 45 Law J. Rep. Chanc. 836; Law Rep. 8 Ch. D. 27.
(8) 36 & 37 Vict. c. 36.

They also referred to *Needham* v. *Bremner* (9), *Moss* v. *The Anglo-Egyptian Navigation Company* (10) and *Parton* v. *Johnson* (11).

Anderson, for the defendants. — The judgment in *Whalley* v. *Thomas* does not operate as an estoppel in the present action, for an estoppel will only arise where there has been a decree between the same parties in an action brought for the same object. The present action may affect all the next-of-kin of the testator, and some of these have not been joined. The object of the action in the Chancery Division was to set aside the compromise, which was all that that Division had jurisdiction to do — *Allen* v. *McPherson* (12), *Henderson* v. *Henderson* (13) and *Melhuish* v. *Milton* (7). The present action is brought for a different purpose, and in the former action there was no finding as to the will alleged to have been executed in April, 1881. *Barrs* v. *Jackson* (2) involved a question as to the exclusive jurisdiction of the Ecclesiastical Courts. In *Nelson* v. *Couch* (14) Willes, J., said, "The plea sets up the *exceptio rei judicatæ*. It must shew, therefore, either a merger of the entire cause of action in the judgment which it alleges, or that identically the same matter has been already decided between the same parties."

He also referred to *Cutto* v. *Gilbert* (15) and *Hunter* v. *Stewart* (16).

Middleton, in reply.—*Nelson* v. *Couch* (14) only decides that the real test as to an estoppel is whether the plaintiff had the opportunity of recovering in the first action what he claims in the second. This was pointed out by Pollock, B., in *Brunsden* v. *Humphrey* (17). The plaintiff has

(9) 35 Law J. Rep. C.P. 313; Law Rep. 1 C.P. 583.
(10) 35 Law J. Rep. Chanc. 179; Law Rep. 1 Chanc. 108.
(11) 37 Law J. Rep. Prob. & M. 67; Law Rep. 1 P. & D. 549.
(12) 1 H.L. Cas. 191.
(13) 3 Hare, 100.
(14) 15 Com. B. Rep. N.S. 99; 33 Law J. Rep. C.P. 43.
(15) 3 Moo. P.C. 149.
(16) 31 Law J. Rep. Chanc. 346.
(17) 52 Law J. Rep. Q.B. 756; Law Rep. 11 Q.B. D. 712.

at any rate established his interest against all the persons who relied upon the forged will.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on April 1).—This is a suit to revoke the probate of an alleged will of James Whalley bearing date the 21st of March, 1881, the ground on which revocation is sought being that the alleged will is a forgery.

The plaintiff sues as the executor of an alleged will of the deceased bearing date in or about April, 1881; and the defendants are sued as the only persons claiming under the will which is sought to be revoked. The statement of claim alleges that a former action brought by the plaintiff in this Division to establish the will of April, 1881, was put an end to by virtue of an agreement of compromise between the plaintiff and the present defendants, and that, in pursuance of that compromise, the Court, by its judgment bearing date the 10th of June, 1882, pronounced in favour of the alleged will of the 21st of March, 1881; that the plaintiff afterwards discovered that the said alleged will was a forgery; that he thereupon commenced an action in the Chancery Division against the present defendants, wherein he claimed to have the compromise in consequence of which the judgment in favour of the will of the 21st of March, 1881, had been pronounced set aside, on the ground that it was produced by the fraudulent representation of the defendant Thomas that such will was genuine, whereas in fact it was a forgery, and that the defendant Thomas was party or privy to such forgery; that the said action, having been transferred to the Queen's Bench Division, was tried before Mr. Justice Manisty, and that on the 16th of November, 1883, the jury found that the said compromise, so far as it related to the interest which the defendant Thomas took under it — namely, 170,000*l.* and costs — was procured by his fraud, and that the alleged will of the 21st of March, 1881, was a forgery; and that the Court thereupon gave judgment, declaring the said agreement of compromise, so far as related to any interest which the defendant Thomas took under it, was obtained by his fraud, and that the same was invalid; and it was ordered that the said agreement of compromise, so far as regards the defendant Thomas, should be set aside. It is further averred that no application has been made to set aside the said verdict and judgment, and that the same remain binding and valid.

Upon these facts the plaintiff says that the defendants Thomas and Gunnell are estopped from denying that the said agreement of compromise was obtained by the fraud of Thomas, that the alleged will of the 21st of March, 1881, is a forgery, and that the defendant Thomas was party or privy to such forgery.

The defendants Thomas and Gunnell, in their statement of defence, do not deny that the verdict and the judgment of Mr. Justice Manisty were given as alleged, or that they remain binding and valid; but they say that they desire to have the question whether or not the alleged will was a forgery submitted to another jury; and they deny that in this action they are estopped from denying that the agreement of compromise was obtained by fraud, or that the will was a forgery.

On these pleadings the plaintiff applied that the question of law raised, whether or not the defendants Thomas and Gunnell are estopped from denying that the compromise was obtained by fraud, or that the alleged will of the 21st of March is a forgery, should be heard and disposed of before the trial of the action, under Order XXV. rule 3. Having made an order to this effect, I have heard the arguments of counsel, and I now proceed to decide the question so raised.

The main question in the present action is, whether the probate already granted of the will of the 21st of March, 1881, shall be revoked on the ground that it is a forgery. If the defendants Thomas and Gunnell are estopped from denying that it is a forgery, they are not in a position to contend that the probate should not be revoked. Are they so estopped? For the defendants it was argued that the action tried before Mr. Justice Manisty was brought for a different purpose to that

for which this action is brought, and that the finding that the will was a forgery was merely collateral to the issue there raised, and that consequently no estoppel arises. I am, however, of opinion that the conclusive effect of the verdict and judgment in that action is not confined to the bare issue whether the agreement of compromise was obtained by fraud, but extends to that which it was necessary in that action to decide, and which was in fact decided as the basis of the decision. In the case of *Flitters* v. *Allfrey* (5) the ruling of Lord Coleridge to this effect was upheld by the present Master of the Rolls and Mr. Justice Grove. In that case a landlord sued his tenant in a County Court for twenty-nine shillings, alleged to be due for twenty-nine weeks' rent of a cottage at a shilling a week. The County Court Judge held that the plaintiff was not entitled to recover, on the ground that the tenancy was a yearly one. The tenant then brought an action in the Court of Common Pleas for breaking and entering his dwelling-house and evicting him. This had in fact been done under a warrant and order for his eviction made by magistrates under the 1 & 2 Vict. c. 74. The jury found, contrary to the finding of the County Court Judge, that the holding was a weekly one; but Lord Coleridge held that the matter was concluded by the finding and judgment of the County Court Judge, and the plaintiff recovered 5*l.* damages. This ruling was upheld by the Divisional Court. The cases on the subject are there fully gone into, and none were cited in the argument before me which affect the authority of that decision.

In the notes to *The Duchess of Kingston's Case* (18) it is said that it is not necessary that the point on which it is sought to estop should have been the only one in issue on the previous occasion. It is enough if it be one which must have been decided. In the present case it is clear that the jury must have decided that the will of the 21st of March, 1881, was a forgery, not merely because they did in fact so find, but because it was the specific allegation of fraud upon which they found that the compromise was obtained by the fraud of Thomas.

It was contended that the plaintiff, if he is entitled to have probate of the will of the 21st of March, 1881, revoked, ought to have included its revocation in the relief claimed by him in the action in the Chancery Division; but I am of opinion that he could not properly have done so, since the granting or revoking of a probate was within the exclusive cognisance of the Court of Probate, and is therefore now assigned to this Division.

Solicitors — Torr, Janeways, Gribble & Oddie, agents for Raynor & Turner, Manchester, for plaintiffs; Bell, Steward & Steward, agents for Lloyd & Son, Leominster, for defendants.

[IN THE COURT OF APPEAL.]

PROBATE. 1884. Jan. 11. } RIGG *v.* HUGHES.*

Practice — Probate Division — Appeal from Order in Chambers — Special Leave.

The practice with reference to appealing from orders in chambers in the Probate Division is the same as that which is followed in the Chancery Division—namely, that special leave must be obtained from the Judge, which leave is signified by a certificate from the Judge that he does not require to hear any further argument in the case.

This was an appeal by one of the defendants from an order in chambers made by Sir J. Hannen refusing to strike out a certain paragraph in the plaintiff's reply to the defendant's counter-claim as being embarrassing.

Middleton, for the appellant.

Bayford, for the respondent.—This is an appeal from an order in chambers for which special leave must be obtained,

(18) 2 Sm. L.C. 803.

* *Coram* Cotton, L.J., and Fry, L.J.

which has not been done. The practice in the Probate Division is similar to that in the Chancery Division, under which if the Judge does not desire to hear further argument special leave to appeal to the Court of Appeal must be obtained from him. This leave must be signified by the granting of a certificate, upon which the party desiring to appeal may do so without any intermediate hearing.

Their Lordships (after conferring with Sir James Hannen) said that in this particular case Sir J. Hannen did not desire to hear any further argument, and the appeal would therefore be heard; but their Lordships wished it to be understood that in future the practice with reference to appeals from orders in chambers would be the same in the Probate Division as in the Chancery Division.

Their Lordships then heard the case upon its merits, and dismissed the appeal.

Solicitors—Field, Roscoe & Co., for appellant; Iliffe, Russell & Co., for respondent.

DIVORCE. 1884. April 1.

S. (*otherwise* B.) *v.* B.

Alimony pendente lite — Nullity of Marriage—Decree nisi—Decree absolute.

In a suit by a wife for a declaration of nullity of marriage, alimony pendente lite is payable till the decree nisi is made absolute.

This was a wife's suit for a declaration of nullity of marriage on the ground of her husband's impotence.

The respondent had agreed to pay to the petitioner alimony *pendente lite* at the rate of 25*l.* per month.

On the 21st of February, 1884, the Court pronounced a decree *nisi* declaring the marriage null and void.

The petitioner moved (in chambers) for an order directing the payment of the alimony *pendente lite* to be continued till the decree should be made absolute.

Bayford, in support of the motion.
Searle, for the respondent.

THE PRESIDENT (SIR JAMES HANNEN).—The practice of the Ecclesiastical Courts being to allow alimony *pendente lite*, which runs till the decree is pronounced declaring the marriage a nullity, the only question is, what difference is made by the statute substituting a decree *nisi* for a decree absolute in the first instance in cases of nullity. I think the only effect is to postpone the definite final declaration of nullity until the decree absolute, and therefore the alimony *pendente lite* continues until the decree *nisi* is made absolute.

Solicitors—Hores & Pattison, for petitioner Linklater & Co., for respondent.

ADMIRALTY. 1884. April 9.

THE AVENIR.

Practice — Proceedings by Default — Notice of Trial—Rules of Supreme Court, 1883, *Order XIII. rule* 12; *Order LXIV. rule* 9.

In Admiralty actions in rem, where the defendant has failed to appear, the plaintiffs, besides filing statement of claim, must file notice of trial; though, upon sufficient grounds being shewn, the Court might dispense with such notice.

Action *in rem* on a bottomry bond. The defendants did not appear, and the plaintiffs filed their statement of claim, but no notice of trial was filed.

W. J. Stewart, for the plaintiffs, moved for judgment pronouncing for the validity of the bond, and a decree for the sale of the ship.

[BUTT, J.—You have not filed notice of trial. You are proceeding under Order

The Arcnir, Adm.

XIII. rule 12, which provides that the procedure is to be the same as if the defendant had appeared.]

The Court has power under Order LXIV. rule 9, to dispense with notice of trial.

BUTT, J.—No doubt in a strong case I might dispense with notice; but I do not think I ought to expedite a case of this sort without very special grounds being shewn for doing so. The proper notice must be filed.

NOTE.—Notice of trial having been filed, the case again came before the Court on the 22nd of April, when the President (Sir James Hannen) pronounced for the plaintiffs' claim and decreed the sale of the ship.

Solicitors - Stone, Fletcher & Hull, Liverpool, for plaintiffs.

ADMIRALTY. 1884. May 10. } THE HORACE.

Costs—Higher and Lower Scales—Rules of Supreme Court, 1883, *Order LXV. rule* 9.

The Court will not allow costs on the "higher scale" unless special circumstances of urgency or difficulty are shewn.

The amount at stake in an action is not of itself a sufficient reason for such allowance.

In a salvage action, where the value of the property salved was 32,000*l.*, the Court awarded the plaintiffs a sum of 2,400*l.*

Phillimore, and *W. R. Kennedy*, were for the plaintiffs.

Cohen, Q.C., and *F. W. Raikes*, for the defendants.

Phillimore.—There is a question which must be raised some time or another, as to costs on the higher scale. The rule is, "nature or importance" and "difficulty or urgency." This case is not difficult or urgent, but I do submit that when a sum of 2,400*l.* is recovered in an action it is an important action, and that therefore your Lordship will award costs on the higher scale.

THE PRESIDENT (SIR JAMES HANNEN).—Until some rule is laid down by higher authority upon the subject, it must be taken that something special must be brought to my notice. You must remember that the new scale of costs has been drawn up with a view to uniformity, and it was, in fact, to do away with the old rule of thumb of higher or lower scales. Formerly there was a diversity of practice. In the Court of Chancery, if the matter in dispute was above 1,000*l.*, then, however simple it might be, costs were given on the higher scale. That was not thought to be just. On the other hand, in the common law divisions, although there was a power to give costs on the higher scale, I may say, from my experience, it was very rarely done—I do not remember it ever having been done.

Taking into account that diversity of practice, there has been a new standard scale prepared; but as there may be circumstances of urgency or difficulty, it was thought right to bestow upon the Judges the power of giving costs on the higher scale. Those circumstances of urgency must be shewn. In ordinary circumstances it must be taken that the scale which has now been made is the ordinary one to be usually adopted. I see nothing to distinguish this from the ordinary case.

Phillimore.—Your Lordship sees the word is "importance."

THE PRESIDENT.—I have always seen that would be the word upon which the question would turn, but I have not yet been able to see what exact meaning to attach to it.

Solicitors—W. W. Wynne & Son, agents for Simpson & North, Liverpool, for plaintiffs; Turnbull, Tilly & Mousir, for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. June 28. } THE WARKWORTH.*

Shipping — Limitation of Liability — Collision — "Improper Navigation" — Merchant Shipping Act, 1862 (25 & 26 *Vict. c.* 63), *s.* 54, *sub-s.* 4.

Where a collision at sea is caused through the breakdown of the steering gear, owing to a nut being improperly fixed through the negligence, not of the crew, but of engineers employed by the owners ashore, "the damage is caused by the improper navigation of the ship" within sub-section 4 *of section* 54 *of the Merchant Shipping Act*, 1862, *and the owners are entitled to a judgment for limitation of liability.*

Per BRETT, M.R.—*The section applies to all damage wrongfully done by the ship to another ship while the damaging ship is being navigated, where the wrongful act is due to the negligence of any person for whose negligence the owner is responsible, unless it occurred with the privity of the owner.*

Appeal from the judgment of Butt, J., in favour of the plaintiffs, reported *ante*, p. 4, in an action for limitation of liability brought by the owners of the *Warkworth* in respect of a collision at sea with the *British Enterprise*. The plaintiffs had in an action of damage been held liable by Sir James Hannen for the collision, as being caused by the breakdown of the steam steering gear of the *Warkworth*, owing to a nut being improperly fixed through the negligence, not of any of the crew, but of some persons on shore employed by the owners to overhaul the machinery.

By section 54 of the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), it is provided that "the owners of any ship, whether British or foreign, shall not, in case the following event (among others) occurs without their actual fault or privity, that is to say,—

"(4) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship, . . . be answerable in damages in respect of loss or damage to ships to an aggregate amount exceeding 8*l.* for each ton of the ship's tonnage."

Webster, Q.C., and *Phillimore*, for the appellants.—The improper fixing of the nut was not "improper navigation." When a gun bursts through some defect, that is not improper shooting. "Navigation" includes directing the progress of the ship by sailing, steering, and the look-out. Possibly it includes stowage, nothing more. The protection has gradually been extended by Act of Parliament, and ought to be construed strictly. By 26 Geo. 3. c. 86. s. 1, it applied to goods only, for the loss of which the owner's liability was restricted to the value of the ship and freight. By the Merchant Shipping Act, 1854, s. 504, it was extended to loss of life and personal injury, and by this Act it is extended to a limit of 8*l.* a ton.—As to the meaning of "navigation" they cited *Hayn* v. *Culliford* (1).

[BRETT, M.R.—The bill of lading in that case provided that the owners should not be liable "for the default of the pilot, master or mariners" in navigating the ship, not for navigating it generally.—He referred to *Laurie* v. *Douglas* (2), in which it was held that canting over in port was a danger of navigation.]

"Navigation" in this section means handling the ship. In the *Imperial Dictionary* "navigation" is defined as "the science or art of conducting ships or vessels from one place to another."

Finlay, Q.C., and *J. G. Barnes*, for the respondents, were not called upon to argue.

BRETT, M.R.—In this case the plaintiffs' ship was, it cannot be doubted, being navigated by water from one place to another. By reason of some defect she failed to avoid another ship, and while going through the water struck that other ship. Is the owner liable? Not unless the striking was the result of the negligence of some one for whom he was liable. Suppose the defect was a secret defect, and the ship was bought of a builder of known character,

* *Coram*, Brett, M.R.; Bowen, L.J., and Fry, L.J.

(1) 48 Law J. Rep. C.P. 372; Law Rep. 4 C.P. D. 182.

(2) 15 Mee. & W. 746.

the owner would not be liable at all, and would not want the protection of this Act. Therefore the collision was the result of the negligence of some one for whom the owner was responsible. To say that the Act does not apply to negligence on shore is true, if no result happens while the ship is being navigated. If the negligence occur on shore, we must assume that its effect is carried on to the water and affects the navigation. The negligence here consisted in improperly putting a screw into some part of the steering gear. That was negligence, as held by Sir James Hannen. If that were all, and the negligence did not cause the damage, it would be immaterial; but it was the *causa causans* of the damage. It was not the *causa proxima*—that was the inability of the captain to steer so as to avoid the collision; but that inability was caused by the act of a servant of the owner done before the ship started and carried on afterwards. Is the plaintiffs' liability limited to 8*l.* a ton? Does the Act include this case? It is not for us to-day to decide how much the Act includes, or what it excludes. The damage happened to the other ship in this case while the owners' ship was being navigated, by the negligence of some one for whom the owners are responsible. The section says that the owners of the ship shall not, "where any loss or damage is by reason of the improper navigation of such ship caused to any other ship," be answerable in damages in respect of damage to the ship to an aggregate amount exceeding 8*l.* per ton. Was the damage in this case caused by reason of the improper navigation of the ship? Running into another ship is not proper navigation. It is said that improper navigation means navigation caused by the negligence of the master or crew; but "improper" really means "wrongful" —that is, otherwise than by inevitable accident. I will read to what, in my judgment, the Act applies: All damage wrongfully done by the ship to another ship while the damaging ship is being navigated, where the wrongful act is due to the negligence of any person for whose negligence the owner is responsible, unless it occurred with the privity of the owner. If the negligence of such a person is the *causa causans* of the damage, that is improper navigation. The appeal must therefore be dismissed.

BOWEN, L.J.—Improper navigation, it is said, is confined to the acts or omissions of those on board while engaged in navigation; but, in my opinion, it means improper navigation by the owner. That is the meaning of it in the eye of the law and according to the language used in the declarations of lawyers under the older system of pleading. It means damage wrongfully done by the owner in navigating the ship. I do not think it is confined to the unskilful navigation of those on board. I take the larger view, and, in my opinion, an owner who uses a ship on a voyage so as not to be safe to others improperly navigates her.

FRY, L.J.—We have been referred to the definitions in the dictionaries of the word "navigation." It is defined as the science or art of conducting a ship from one place to another. This includes the supply of necessary implements and skilful mariners. The instruments are useless without the skilful mariners, and conversely. Navigation includes two things, the supply of the instruments or organs of the ship, and the living instruments, or seamen. If either of these is wanting by the negligence of the owner, or of those for whom he is responsible, there is improper navigation. It may include many other cases, but it certainly includes this case. In the judgment of the Court below, Mr. Justice Butt says: "I do not see why this relief should be limited to a case in which damage has occurred through the negligence of the master and crew, or why the same considerations should not apply to the negligence of persons other than the master and crew employed by the shipowner to attend to the ship in preparation for the voyage —as, for example, a marine engineer employed while the ship is in port to overhaul the machinery." That, I think, is a just observation, and I adopt it.

Decision affirmed.

Solicitors—Gregory, Rowcliffes & Co., agents for Hill, Dickinson & Co., Liverpool, for appellants; Thomas Cooper & Co., for respondents.

ADMIRALTY.
1884.
June 13.

THE PACIFIC.

Collision — Fishing-smack — Globular Lantern—Article 11 *of the Regulations for Preventing Collisions at Sea.*

A fishing-smack, trawling with a globular lantern exhibited from her weather crosstree, was run down by a steamer which was overtaking her:—Held, *that the smack was to blame for neglecting to shew a light from her stern, and thereby infringing article* 11.

Action for damage by the owners, master, and crew of the fishing-smack *Speculator* against the owners of the steamship *Pacific*, in the following circumstances:—

The smack had her trawl down, and, with the wind on her port side, was making about a knot an hour headway, and was drifting to leeward. She was ketch-rigged, and had her mainsail, main-topsail, mizen, fore-staysail and jib set, and was exhibiting from her weather crosstree a bright light in a globular lantern. In these circumstances the *Pacific*, which had been seen for some time coming up, about a point on the starboard quarter, ran into and sank the smack.

It was admitted by the witnesses from the *Speculator* that the light on the weather crosstree would be obscured by the mainsail to a vessel dead to leeward and to about three points on the starboard quarter, and that no flare-up or light other than that on the weather crosstree was shewn to the overtaking vessel.

Dr. Phillimore, Q.C. (*Bucknill* with him), for the plaintiffs, argued that article 11, as to shewing a light from the stern, or burning a flare-up, did not apply to vessels exhibiting a light which shewed all round the horizon, and that if the light was visible astern the regulation had been complied with.

Charles Hall, Q.C. (*W. R. Kennedy* with him), *contra.*

BUTT, J.—This is a case where, on a fine night, though perhaps somewhat dark and cloudy on the horizon, the smack *Speculator* was run down and sunk by the steamship *Pacific* in the North Sea, somewhere in the neighbourhood of the Dogger Bank. The substantial questions in the case relate to the lights carried or shewn by the smack. For reasons to which I have adverted during the progress of the case, I do not consider it necessary to go into the questions raised under the Orders in Council which deal with article 9 of the old and article 10 of the new regulations, for even if side-lights had been carried they could not have been seen by those on board the *Pacific*. It is clear from the evidence that the smack's light was so placed that it could not have been seen all round the horizon: what was the exact extent of the obscuration it is not easy to say. I do not wish it to be understood that I consider the smack is necessarily to blame for that, for there is difficulty in placing it so that it could be thus seen. But in this state of things it is certainly more important that the other regulations should have been strictly observed. I have no doubt that the regulation which requires a light to be shewn from the stern was infringed; and, even apart from the regulation, ordinary caution and seamanship would require some light to be exhibited from the stern of the smack as the *Pacific* was approaching her. It has been argued on behalf of the plaintiffs that, assuming the light on the weather crosstree to have been visible to the overtaking vessel, there was a substantial compliance with article 11. But I do not think that contention can be maintained. I think the view of the Legislature in framing this regulation was something very different from a light shewn in the fore-part of the vessel, and that what was intended was a special and temporary signal to warn overtaking ships. The question then arises, Was the steamer also to blame? I have already said that the smack's light was obscured from some points of view, and we think it was obscured to the approaching steamer. We are satisfied that there was a good look-out on board the *Pacific*, and the smack's light was admittedly a good one. It is said, however, that those on board the steamer ought to have seen the hull and sails of the smack before she did. I must say that, where it is the duty of a vessel to exhibit a light, and she does not

The Pacific, Adm.

do so, I do not think the Court ought to be over-nice to enquire whether the sails and hull might or might not have been seen earlier than they actually were. As a matter of fact, we think that they were seen by those on board the *Pacific* as soon as was possible. Lastly, having regard to the place where the *Pacific* was navigating, we do not think that she was going at an improper rate of speed. The *Speculator*, therefore, must be pronounced alone to blame.

Solicitors — Pritchard & Sons, agents for A. M. Jackson, Hull, for plaintiffs; Stokes, Saunders & Stokes, agents for Hearfields & Lambert, Hull, for defendants.

[IN THE COURT OF APPEAL.]

DIVORCE. 1884. Jan. 11. } CLIFFORD *v.* CLIFFORD.*

Husband and Wife—Separation Deed—Annuity to Wife—Adultery of Wife—Dissolution — Variation of Deed — 22 & 23 Vict. c. 61. s. 5.

In June, 1881, *a deed of separation was executed by a husband and wife, under which the husband covenanted to pay for the benefit of the wife an annuity of 52l. Shortly after the separation she committed adultery, and the husband obtained a decree for dissolution of the marriage. On a petition presented by the husband to have the deed of separation set aside or varied,*—Held, *by* BUTT, J., *treating the case as substantially one of alimony, that the deed ought not to be varied; but* Held, *by the Court of Appeal, that the case ought not to be treated as one of alimony, but that the Court had a discretion as to the allowance which, under the circumstances, ought to be made to the guilty wife; and that, under all the circumstances, the allowance ought to be reduced by one half.*

This was an appeal from a decision of Butt, J., refusing to vary the terms of a deed of separation, dated the 13th of June, 1881, which had been made between the appellant Clifford and his wife.

* *Coram* Cotton, L.J., and Fry, L.J.

In this deed the husband covenanted to pay to a trustee during the joint lives of himself and his wife an annuity of 52*l.*, in trust for her for her separate maintenance and support.

Soon after the separation the wife committed adultery, and on the 11th of August, 1881, the appellant filed a petition for dissolution of the marriage. Pending the action the wife obtained an order for alimony for 52*l.* a year. In her defence she made gross charges against her husband, which, however, at the trial she did not attempt to substantiate. The result of the action was that the husband obtained a decree absolute for the dissolution of the marriage.

There were three children of the marriage, who were living with the husband.

The husband then presented a petition to the Court, asking to have the deed set aside or varied.

It appeared that the wife had no means of support, and that the income of the husband was about 270*l.* a year.

Butt, J., appeared to have treated the case as substantially a question of alimony, and refused to vary the deed.

The husband now appealed.

Inderwick, Q.C., and *H. B. Deane*, for the appellant. — This is an application under 22 & 23 Vict. c. 61. s. 5. In *Robertson* v. *Robertson* (1) it was held that, as to the provision to be made for a guilty wife, the Court has an absolute discretion. The case has been erroneously treated as one of alimony; but the Court has a discretion to say, under the circumstances, what the guilty wife ought to have. We say that she ought not to have anything, or, at any rate, that the allowance should be reduced.

Bayford, for the respondent. — The Judge has exercised his discretion, and the Court of Appeal will not interfere unless there has been a miscarriage of justice—*Wigney* v. *Wigney* (2). In *Jump* v. *Jump* (3) the allowance to a wife was reduced on dissolution of the marriage, the allowance

(1) 51 Law J. Rep. P., D. & A. 5; Law Rep. 8 P. D. 94.

(2) 51 Law J. Rep. P., D. & A. 60; Law Rep. 7 P. D. 7

(3) 52 Law J. Rep. P., D. & A. 71; Law Rep. 8 P. D. 159.

having been given for the maintenance of the wife and two children who were to live with her. Here the allowance is for her own maintenance alone, and the Court will not interfere with the discretion of the Judge, who thought 20*s.* a week was not too much.

COTTON, L.J.—This is an appeal from an order made under 22 & 23 Vict. c. 61. s. 5, which gives the Court power after a decree for dissolution of marriage to enquire into the existence of settlements, and to make such orders with reference to the application of the whole or a part of the property settled, either for the benefit of the children of their marriage or of their respective parents, as the Court shall think fit. Here there was a separation deed, under which the husband covenanted to pay to a trustee for the benefit of the wife 52*l.* a year, and to provide furnished lodgings for her. Very shortly after the execution of this deed she committed adultery, and the husband has obtained a decree absolute for dissolution of the marriage. The Judge in the Court below has declined to interfere with the deed, and if it had appeared that he had so declined in the exercise of his discretion, we should have been slow to interfere; but he appears to have treated the case as a question of alimony, where the amount to be allowed to the wife depended chiefly upon the husband's means. That, in my opinion, is not a just view. The deed was executed to provide for the wife as a wife living separate from her husband, and, though it is not avoided by what has occurred, the question is how far the Court should allow it to take effect under the altered circumstances of the wife's having committed adultery. We must consider these circumstances, and we may also consider the conduct of the wife in the action. In her defence she has brought gross charges against her husband which she has taken no steps to prove, and has put him to great expense and annoyance in consequence.

We have been pressed to apply the whole of the allowance for the benefit of the husband and children. I do not think that would be right; but we must not be understood to say that in no case ought the whole to be applied for the benefit of the innocent party and the children. In the present case I think that the proper course will be to reduce the allowance to the wife by one half, allowing the husband to retain the other half.

FRY, L.J.—I am of the same opinion. I am far from saying that there may not be a case in which the Court would deprive the guilty wife of the whole income. I think, under the circumstances, however, the order suggested by Lord Justice Cotton is right.

H. B. Deane.—I presume, my lord, that the reduction will take effect as from the date of the filing of the petition to vary the separation deed?

COTTON, L.J.—Yes (4).

Solicitors—J. H. Hortin, for the husband; St. Paul & Edridge, for the wife.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. April 29.

THE WINSTON.*

Compulsory Pilotage—Pilotage District—Ship passing through—Loading or Discharging—25 & 26 *Vict. c.* 63. *s.* 41.

A steamship, while on a voyage between two places outside a pilotage district, entered a port within such a district in order to take in coal for the voyage, and while there was in charge of a duly licensed pilot: —Held, *that the ship was bound when so loading in such a district to employ a pilot, that the words "loading or discharging" in* 25 & 26 *Vict. c.* 63. *s.* 41, *are not confined to loading or discharging cargo, and that the owners of the ship were not liable for a collision caused by the negligence of the pilot.*

Appeal from the judgment of Sir J. Hannen.

The case is reported 52 Law J. Rep. P., D. & A. 72.

Action by the owners of the steamship

(4) But see *Paul* v. *Paul*, Law Rep. 2 P. & D. 93.—[REPORTER.]

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

Warwick Castle against the owners of the steamship *Winston*, to recover damages for a collision which occurred in Dartmouth Harbour while the *Warwick Castle* was at anchor, and while the *Winston*, which was sailing from New York to Newcastle, was putting into Dartmouth for the purpose of taking in coal.

The defendants admitted that the *Winston* was in fault, but claimed exemption from liability on the ground of compulsory pilotage. The plaintiffs admitted that Dartmouth was a pilotage district within the meaning of the Merchant Shipping Acts, 1854 and 1862 (1), and that the *Winston* was at the time of the collision in charge of a duly licensed pilot.

Sir J. Hannen gave judgment for the defendants.

The plaintiffs appealed.

Cohen, Q.C., *Bruce, Q.C.*, and *Bucknill*, for the plaintiffs.

Phillimore and *Raikes*, for the respondents, were not called on.

BRETT, M.R.—The only question is, what meaning must be given to 25 & 26 Vict. c. 63. s. 41 (1). That section applies to a pilotage district other than that in which the original port of loading or the final port of discharge is situated; it deals with an intermediate part of the voyage. This section was passed to amend a section of the earlier Act of 1854, and it seems to imply that though, in one sense, a ship may be passing through a district, yet she may also be loading there, and then she must employ a pilot. She must do so when she does not merely pass through the district, but when she does something else, as when she enters a port for a definite purpose. We cannot limit the operation of the section to the loading of cargo only, and we think that loading coals for the purpose of the voyage brings the section into operation.

BOWEN, L.J., concurred.

FRY, L.J.—I am of the same opinion, and agree that this appeal must fail. The loading in this case was, I think, the kind of loading contemplated by the statute, as it was a loading during the passing of the ship through a pilotage district.

Appeal dismissed.

Solicitors—Parker, Garrett & Parker, for appellants; Pritchard & Sons, agents for Turnbull & Tilley, West Hartlepool, for respondents.

(1) 25 & 26 Vict. c. 63. s. 41: "The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts shall be exempted from any obligation to employ a pilot within such district or to pay pilotage rates when not employing a pilot within such district: Provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries."

ADMIRALTY. 1884. June 17. } THE MAMMOTH.

Practice—Taxation of Costs—Prints of Record in another Action—Three Counsel.

A collision occurred between the P. M. and the M., in consequence of which the P. M. also collided with the D., doing damage to the latter to the extent of 2,700*l. The P. M. and the D. commenced actions against the M.; but the D. stood by until the P. M.'s action was decided. In the P. M.'s action the M. was found alone to blame. Prints of the evidence taken in the P. M.'s action were obtained by the solicitors for the D. from the solicitors for the P. M., and were used in the action by the D. against the M. Three counsel were employed in the latter action on behalf of the D.*:—Held, *that the solicitors for the D. were entitled to charge the defendants* 3*d. per folio for the prints of the record.* Held, *further, that, considering the amount of the damage, the allowance of the costs of three counsel was not unreasonable.*

Summons in objection to the Assistant Registrar's taxation of the plaintiffs' bill of costs, adjourned into Court.

The facts were as follows:—

A collision occurred in the river Thames

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between the *Persian Monarch* and the *Mammoth*, in consequence of which the *Persian Monarch* also came into collision with the *Dunscore*.

Actions were commenced both on behalf of the *Persian Monarch* and the *Dunscore* against the owners of the *Mammoth*, but the owners of the *Dunscore* stood by to await the result of the action brought by the *Persian Monarch*. At the hearing of the latter action the *Mammoth* was found alone to blame.

Subsequently it was agreed between the solicitors for the *Dunscore* and the solicitors for the *Mammoth* that the whole of the record in the *Persian Monarch's* action should be admitted as evidence in the action by the owners of the *Dunscore*, and prints of the record were obtained by the solicitors for the *Dunscore* from the solicitors for the *Persian Monarch*, and copies of the same supplied to counsel. Three counsel were retained by the owners of the *Dunscore*. The defendants subsequently agreed to pay a sum of 2,700*l.* in settlement of the plaintiffs' claim.

In the plaintiffs' bill of costs the following items were allowed by the Assistant Registrar and objected to by the defendants:—

An allowance of 3*d.* a folio on each of the copies of the printed record supplied to counsel;

The costs of three counsel.

Bucknill, for the defendants, in objection to the Assistant Registrar's taxation.—There is no rule or scale under the Judicature Acts which empowers a taxing officer to allow for prints of a document which have been printed for use in another action. No labour has been bestowed by the plaintiffs' solicitors on these prints to entitle them to any allowance. The defendants have already in the action by the *Persian Monarch* paid for these prints of record, and, if this allowance is upheld, will have to pay for the same thing twice over. Under Order LXVI. rule 7, only a party to the action in which a document has been printed is entitled to take prints, or to charge for prints for the use of counsel.

He also objected to the allowance of the costs of three counsel.

W. R. Kennedy, for the plaintiffs.

BUTT, J.—I think there is no reason to interfere with the taxation of the Assistant Registrar. The first group of items objected to are those for the prints of the record over and above the sum actually paid to the solicitors of the *Persian Monarch*. It is admitted that, if these records had been printed by a party to the action under an order, the plaintiffs would have been entitled to charge at the fixed rate of 3*d.* per folio under Order LXVI. rule 7. But it is said that this rule does not apply where the record is printed by parties other than those to the action in which the prints are originally prepared.

I am of opinion, however, that when parties agree not to proceed in the ordinary way by calling evidence, but adopt another course by using prints prepared for the purposes of an appeal, it is tantamount to an agreement that the parties shall be in the same position as if it had been actually necessary to have this evidence printed under an order. Therefore I think that the objection to the allowance of these items fails. As to the costs of a third counsel, I am quite aware of the new rules, but it has not been argued that I am bound by any of them. It appears to me that in the case of a heavy collision, when damage has been done to an amount exceeding 2,000*l.*, it is not unreasonable to have three counsel—that is to say, nothing has been shewn to me as regards this item to cause me to overrule the Taxing Master's discretion.

The objections must therefore be overruled, with costs.

Solicitors—T. Cooper & Co., for plaintiffs; Freshfields & Williams, for defendants.

ADMIRALTY. 1884. June 17. } THE BRITISH COMMERCE.

Collision—Damages—Commission for Bail in Salvage Action.

Commission paid for bail in a salvage action, brought in respect of services rendered to a vessel which has been damaged by collision, cannot be recovered as damages from the owners of the wrongdoing ship.

Special Case agreed on between the parties and heard on motion in objection to the Registrar's report.

A collision occurred between the *County of Aberdeen* and the *British Commerce*. The *County of Aberdeen* received serious damage, and salvage services were rendered to her by the *Paris*. An action was subsequently commenced in respect of these salvage services against the *County of Aberdeen*, and bail to answer the claim given by her owners in 4,000*l*. A commission of one per cent. was paid for bail. Subsequently the owners of the *County of Aberdeen* commenced an action for damage against the owners of the *British Commerce*, at the hearing of which the *British Commerce* was held alone to blame for the collision. At the reference the owners of the *County of Aberdeen* claimed, amongst other things, 40*l*. in respect of the commission paid for bail, which item the Registrar disallowed.

Bucknill, in objection to the Registrar's report.—The costs incurred in defending a salvage action can be recovered against the wrongdoing ship—*The Legatus* (1); and the same principle applies to the commission paid for bail, which is a reasonable expenditure incurred in the salvage action. The plaintiffs are entitled to *restitutio in integrum*.

Aspinall, contra, was not called upon.

BUTT, J.—I cannot vary the report of the Registrar in this case. It is clear that this commission for bail is not allowed in practice as part of the costs payable by a defeated litigant as between the immediate parties to an action. Therefore, if I am to consider myself bound by the practice, it is obvious that I should not allow them as against a third and unsuccessful party in another action. But, in spite of the *Legatus* (1) which has been cited, I am in doubt as to whether the costs of defending a salvage action should be recovered as part of the damages in an action for collision. But it is unnecessary to decide that point now; it is sufficient to say that I shall certainly not enlarge the rule approved in that case, and therefore this motion must be dismissed with costs.

Solicitors—T. Cooper & Co., for plaintiffs; Gregory & Co., agents for Hill, Dickinson & Co., Liverpool, for defendants.

ADMIRALTY. 1884. June 19, 20. } THE ZADOK.

Collision—Fog—Speed of Sailing Ship—Fog Horn.

Though no absolute rule can be laid down, it is the duty of a sailing ship in a fog, where she may expect to meet numerous vessels, to go at as low rate of speed as is consistent with keeping good steerage way.

The fact that a fog-horn which is proved to have been sounded is not heard on board an approaching vessel is not necessarily proof of negligence on the part of those on board that vessel.

Action for damage brought by the owners of the steamship *Iduna* against the owners of the barque *Zadok*, in respect of a collision which occurred off the Isle of Wight on the 25th of May, 1883, in a thick fog. The facts of the case sufficiently appear from the judgment.

Myburgh, Q.C., and *Phillimore* appeared for the plaintiffs.

Webster, Q.C., and *Bucknill*, for the defendants.

THE PRESIDENT (SIR JAMES HANNEN).—It is common ground in this case that there had been foggy weather, off and on,

(1) Swabey, 168.

for some time before the collision; and that there had come down a bank of fog, for some considerable time before the collision occurred, which of course made it necessary for both vessels to take proper precautions. Now the evidence satisfies me that, on board the steamer, care had been taken some time before the collision. Of course that does not prove that at the time of the collision, and immediately before it, care was being taken, but, at any rate, it has a tendency to shew that those on board the *Iduna* were alive to the necessity of taking proper precautions against casualties arising through the fog; and the evidence proves that those on board the *Iduna* were discharging the duty, imposed upon them by the rules, of blowing their steam-whistle every two minutes or so. That is admitted by those on board the *Zadok*.

It was the duty of both vessels to go at a moderate speed, and it appears to me that the object with which that rule of conduct is imposed is, not merely that they should be going at a speed which will lessen the violence of a collision, but also that they should be going at a speed which will give as much time as possible for making those manœuvres which may become necessary under unforeseen circumstances —for in a fog it cannot be told exactly from what quarter the danger will come. Now the evidence of the *Zadok* establishes that on the *Iduna* the whistle was being blown properly; and it is to be observed that the whistle was heard, certainly three times, and that it was heard on each of those occasions with intervals of something approaching two minutes, from about the same direction from the *Zadok* — namely, from 1 to 1½ points on her port bow—and that finally the *Iduna* herself was seen at about that bearing from the *Zadok*. Now that tends strongly to corroborate the evidence on board the *Iduna* that that vessel was going at a very moderate speed; for if she had been going as fast as is represented by those on board the *Zadok*, it is obvious that during those five or six minutes she would have had an opportunity of changing her position greatly with regard to the *Zadok*, which it appears she did not do. The *Zadok*, however, we know, was approaching her with her head towards her.

I therefore think that this evidence corroborates that given by the witnesses from the *Iduna*, that she had been brought to a rate of speed as low as it was possible for her to be brought without stopping her altogether.

Now, on the other hand, with regard to the speed of the *Zadok*, the entries in the log-book carry the case thus far; they satisfy me—and I may say, in passing, that though I speak of my own judgment, wherever it relates to any nautical matter I am speaking on the advice and with the concurrence of the Trinity Masters—the evidence satisfies them, and me, that this vessel under similar conditions to those in which she was sailing—that is, close-hauled, and with a moderate breeze—was at any rate capable of going at a much greater rate than the several witnesses for the *Zadok* have represented that she was going. Those entries establish that she was capable of going and that she had gone five knots an hour under similar conditions, and I am bound to say that the impression left upon my mind by the evidence is that she was at this time going faster than that.

Now at present there is a degree of uncertainty as to what construction is to be put upon the phrase that steamers and sailing vessels are to go "at a moderate speed" in a fog, and I am disposed to think that no absolute statement of rate of speed can be fixed upon. But it appears to me that the object of the rule is this—that when a fog comes on it is the duty of the ship, whether she be a sailing ship or a steamer, to moderate her speed as much as she can, yet leaving herself with the capacity of being properly steered. Of course, in the case of a sailing ship, we know that she must have way on and keep her sails full, otherwise she will not have the power of controlling her movements; but, subject to that, in a fog, where she cannot see her way, it is her duty to moderate her speed down to this standard. Some margin must be allowed for the particular circumstances of the case—and it is not to be said that exactly the same rule would apply to a sailing ship out in mid-ocean; but when one has

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to deal with a case like this, of a vessel which is passing across a course in which it is to be expected that numerous vessels may be, it is her duty to reduce her speed, as I have said, to as low a rate as is consistent with her keeping a good steerage way.

In this case it is proved that the *Zadok*, if she had not literally every stitch of canvas set, yet had very nearly all the canvas she could carry; and I come to the conclusion that she was going at a speed which, in the circumstances, was not moderate, and therefore that she has infringed the rule.

But, in addition to that, I am advised that the course pursued by the *Zadok* was not proper and seamanlike in this, that though the whistle of the *Iduna* was heard once, and twice, and thrice, yet no precaution whatever was taken on board the *Zadok* to guard against a contingency, which she was warned might happen, of a steamer being in a position which required caution.

I am advised that what ought to have been done was this, that men should have been stationed so as to work on the braces, and to put the foresail aback by letting them fly; the foreyard would come at once aback, and would tend to throw off the ship's head if at the same time the helm had been put hard a-starboard; and that when the vessel was seen at the distance at which those on board the *Zadok* put it, there would have been time to effectuate that manœuvre, which might have had the effect of avoiding the collision altogether. Instead of that, no preparation was made to do anything on board the *Zadok*. Those on board seem to have thought that she, being a sailing vessel, had a right to keep her course and do nothing. That is not the view I take, nor the view which I am advised should be taken. In that respect, therefore, I am advised that the conduct of those on board the *Zadok* was improper.

There remain two other points to be dealt with. And first as to the fog-horn —there is a body of evidence that those on board the *Iduna* were alert and on their guard, and yet all the witnesses who have been called on the part of the *Iduna* swear that they did not hear the fog-horn. Now I have only to repeat what I said in the case of the *Elysia* (1)—namely, that proof that a fog-horn was blown, yet was not heard at a distance at which it might be expected to be heard, cannot be accepted as proof that there was negligence on the part of those who did not hear it. The conditions in which sound is transmitted are not yet known with sufficient certainty, and no evidence has been given to me upon the subject; but, speaking on it as a matter of general knowledge, I do not consider that the fact of those on board the *Iduna* not hearing a fog-horn proves that no fog-horn was blown. On the other hand I do not consider that the proof that the fog-horn was blown establishes that those on board the *Iduna* were negligent in not hearing it. It is easy to imagine that this fog-horn, though blown, was not blown with its full force; and it may have been that, from the quarter in which the wind was, the sound would be carried away. I come to the conclusion that it was from no want of proper vigilance on the part of those on board the *Iduna* that the fog-horn was not heard, and that therefore their conduct must be judged precisely as though no fog-horn had been blown at all.

Then the condition of things was this: that this vessel suddenly makes its appearance on the starboard side of the *Iduna*, coming directly towards her, and then the question is, what ought to have been done on the part of the *Iduna*? It has been strenuously argued by Mr. Webster that the duty was imperatively imposed upon her of stopping and reversing the engines. I am advised by the Trinity Brethren that in the condition of things represented by those on board the *Iduna*, and which I accept as the true version of the facts, it would have been useless and improper on their part to attempt to perform the manœuvre of stopping and reversing. It would have taken, what may be called when dealing with such events as these, a considerable time before the vessel would have got sternway; in the meantime the first action of reversing the engines would have caused her head to cant towards the *Zadok*, and, in the judgment of the Trinity Masters,

(1) Not reported.

it would have been a wholly ineffectual operation. On the other hand, as things then appeared, the best chance of escaping from the casualty was to put the engines full speed ahead and to starboard the helm. That is the judgment of those who assist me, and it commends itself to my mind. I am therefore led to the conclusion that the whole blame for this collision rests with those on board the *Zadok*, and that is the judgment which I pronounce.

Solicitors—T. Cooper & Co., for plaintiffs; Pritchard & Sons, agents for Bateson & Co., Liverpool, for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. June 17, 18.

THE BERYL.*

Collision—Risk of Collision—Regulations for Preventing Collisions at Sea, 1880, articles 16, 18, *and* 22—*Crossing Ships.*

Two steamships, the A. and the B., were on crossing courses at about right angles, the A. having the B. on her starboard hand, so that it became the duty of the A., under article 16 *of the Regulations for Preventing Collisions at Sea, to keep out of the way of the B. She did not do so, and the ships being then a quarter of a mile apart, the B. whistled and slackened her speed, the A. kept on her course, and when the two ships were within* 300 *yards of each other, the B. stopped and reversed, but a collision took place:*—Held, *that the B. was partly to blame for the collision, as she ought to have stopped and reversed sooner; that the provisions of articles* 16 *and* 18 *of the Regulations for Preventing Collisions at Sea apply to the time when a risk of collision can be avoided, and not to the time when the risk is already fixed, and that in the circumstances of this case the B. was not justified in waiting till the two vessels were within* 300 *yards of each other before she stopped and reversed, for that the provision in article* 22 *as to a vessel keeping her course does not refer to the speed at which, but to the direction in which a vessel is going.*

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

Appeal from the judgment of Butt, J.

Action by the owners of the steamship *Abeona* against the owners of the steamship *Beryl* for damage by collision, and counter-claim by the owners of the *Beryl*.

It appeared that the two vessels were on crossing courses at about right angles, the *Abeona* having the *Beryl* on her starboard hand. It was admitted that the *Beryl* kept her course. When the vessels were some distance apart those on the *Beryl* perceived that the *Abeona* was keeping on her course, and they accordingly whistled twice; the *Beryl* then eased her engines, being at that time between a quarter and half a mile distant from the *Abeona*. The master of the *Beryl* thought that the *Abeona* would port and go under his stern, but he soon saw that the *Abeona* was not giving way, and he then eased. The *Abeona* then also eased. When the two ships were 300 yards apart the *Beryl* stopped and reversed her engines, and so did the *Abeona*, but a collision took place.

Butt, J., held that the *Abeona* was wrongly manœuvred, that the *Beryl* was properly navigated, and held that the *Abeona* was alone to blame.

The owners of the *Abeona* appealed.

Hall, Q.C., and *Phillimore*, for the appellants, referred to the Regulations for Preventing Collisions at Sea, article 18 (1), *Stoomvaart Maatschappy Nederland* v. *The Peninsular and Oriental Steamship Company* (2), *The Khedive* (3), and *The Benares* (4).

(1) Regulations for Preventing Collisions at Sea, 1880, article 16:—"If two ships under steam are crossing so as to involve the risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other."

Article 18: "Every steamship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or stop and reverse if necessary."

Article 22: "Where by the above rules one of two ships is to keep out of the way, the other shall keep her course."

(2) 52 Law J. Rep. P., D. & A. 1.

(3) Law Rep. 5 App. Cas. 876.

(4) *Ante* p. 2; Law Rep. 9 P. D. 16.

The Beryl (App.), Adm.

Myburgh, Q.C., and *W. R. Kennedy*, for the respondents, referred to article 16 of the Regulations for Preventing Collisions at Sea (1).

BRETT, M.R.—The basis of the Regulations for Preventing Collisions at Sea is that they are instructions to persons navigating ships as to their conduct, and the Legislature has given rules which are intended to protect navigation and prevent the risk of a collision. Such rules must apply to circumstances which are, or ought to be, known to persons at the time, they cannot apply to unknown circumstances. If it is said that a man must stop and reverse or must slacken speed so as to prevent the risk of a collision, it would be, I think, absurd to suppose that it would depend on the mere fact whether there was a collision, if the circumstances were such that he could not know there was risk of a collision. Article 18 says that a steamship approaching another ship ought to slacken her speed if there is a risk of collision; but if the night were quite dark and if the other ship shewed no light, then those on the steamer could not know that another ship was near them, and then it would be wrong to say that they ought to have known it. Suppose, again, that two vessels are approaching each other on different courses which will cause them to meet off a high headland, then they cannot, until they are quite close, see each other, and yet it is said that both ought to stop and reverse. But they cannot regulate their conduct with regard to that which they cannot know or see. The consideration, therefore, must always be, not whether the rule did in fact apply, but whether the circumstances were such that it ought to have been present to the mind of the person in charge, so as to apply and so as to require him to act upon it.

Now article 16 says, "If two ships under steam"—that is, with their steam up—"are crossing so as to involve the risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other." If then the circumstances are such that the persons managing two such ships ought to see that there is risk of collision, the ship which is on the port side has to keep out of the way of the other. We have always held that these rules are to be interpreted as applying to a time when the risk of collision can be avoided—that is, at the moment before the risk of collision is fixed and determined: so that the *Abeona* was bound to follow a manœuvre which would keep her out of the way of the other and avoid risk of collision. Article 22 says that "Where by the above rules one of two ships is to keep out of the way, the other shall keep her course." Now "keeping her course" means that she is to keep in the same direction as before, it does not relate to the question of speed.

Article 18, to which reference has been made, is an independent rule, applying to both of the two steamers, whereas the former rules apply to one of two ships approaching each other; and this rule, like the others, applies, as it seems to me, more particularly to the moment before the risk of collision is fixed and determined, and at that moment they are both to slacken speed. If indeed the position is such that at that moment something more than slackening is necessary to avoid risk of collision, then they must stop and reverse, or do one of those things, as the case may require. This must apply if the circumstances are such that an officer of ordinary skill and care would be bound to conclude that if the ships continued to approach each other there must be risk of a collision. These rules are applied in the Court of Admiralty by a mixed tribunal; but the judgment is the judgment of the Judge alone, the assessors are not responsible for it, they are there to assist the Judge on questions of nautical skill. The Judge has to decide on the credibility of witnesses and on the evidence. When nautical questions arise which bear upon particular facts, then the Judge is entitled to ask questions of the assessors, the answers to which may guide him in applying general rules to the particular facts before him, but he is not bound to follow the view of the assessors if he does not think that it is right.

In this case these two vessels were approaching each other in a way which made these rules applicable. Article 16 applied, and therefore the *Abeona* was bound to keep out of the way of the *Beryl*;

and then that article applying to the *Abeona*, article 22 applied to the *Beryl*, and she was bound to keep her course. If both these rules had been obeyed, there never would have been a risk of a collision; but in this case article 18 became applicable. Did the *Beryl* then break any of the rules?

We asked the assessors whether at the time of the second whistle the *Abeona* could without difficulty have passed under the stern of the *Beryl*, or whether she could otherwise without difficulty have avoided her; and that question they answer in the affirmative. We further asked, "Was the officer of the *Beryl* justified as a sailor in supposing, until he was within 300 yards of the other ship, that the *Abeona* would keep out of his way, and could do so without difficulty?" The answer to that question is in the negative. The *Beryl* was therefore within article 18; and so we asked a third question: "At 300 yards could the *Abeona* by any manœuvre have avoided risk of collision unless the *Beryl* had at the same time stopped and reversed?" and the answer to that is no.

I come, therefore, to the conclusion, agreeing as I do with those answers, that the *Beryl* ought to have stopped and reversed in order to avoid the risk of a collision; and if that be so, then the *Beryl* is partly to blame, and the ordinary consequences must follow. The conduct of the *Abeona* was wrong, the *Beryl* was put into a difficult position, and it must be said, as was said in *The Khedive* (2) (though it does not help us in this case), that the officer in charge of the *Beryl* did not do what the law declares he must do (for though the *Beryl* did what was right, she did not do it at the right time), and for this pardonable fault we must say that the owners of the *Beryl* are liable for this collision as well as and equally with the owners of the *Abeona*. This being so, the appeal must be allowed, but there will be no costs either in this Court or in the Court below.

BOWEN, L.J.—I am of the same opinion. Articles 16 and 22 prescribe the course of the ship. Article 18 regulates its speed. Articles 16 and 22 are intended to prevent risk of collision, and may be expressed in the following form: If two ships are crossing in a manner which if the crossing is continued may result in a collision, the one which has the other on her starboard side shall keep out of the way of the other; and in similar manner article 18 shews that the risk of a collision is that which the rules intend to deal with and avoid. Article 22 affects the other ship, but it cannot apply, as has been suggested, to the speed of the vessel. Article 18 says that the steamship shall stop and reverse, "if necessary"—whether this means if actually necessary, or only if the captain thinks it is necessary, may be a matter for consideration; but even if the latter construction be the true one, still in this case the captain of the *Beryl* was in the wrong, and the *Beryl* was partly to blame for the collision.

FRY, L.J.—The words "if necessary" in article 18 mean, I think, if and when necessary—that is, article 18 comes into operation from time to time whenever circumstances exist which make it necessary that article 18 should be acted on. Here the *Beryl* was bound to slacken her speed, and she did so; the risk of collision, however, continued, so that the direction in article 18, which is a continuing one, still applied. The *Beryl* ought not to have continued to advance as long as she did. It is not necessary to decide whether the necessity is to be estimated by the event, and not by the judgment of a sailor acting reasonably with regard to all the circumstances of the case, for the answer of the nautical assessors shews that the captain of the *Beryl* broke the rule.

Appeal allowed.

Solicitors—Ingledew, Ince & Colt, for appellants; Cooper & Co., for respondents.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. July 25, 28.

THE PONTIDA.*

Bottomry Bond—Objections to Amounts in—Authority of Master to pledge Credit of Ship and Cargo Owner—Report of Registrar and Merchants — Deductions made in Items.

The master of a ship is the agent of the owner to pledge his credit only in the case of necessity, and to the extent of that which is necessary to enable the ship to complete her voyage, and he cannot by giving a bottomry bond for an excessive amount fix the owner with liability for anything beyond that which is necessary.

The validity of a bottomry bond having been established, the question whether the items are excessive is to be decided by the Registrar and Merchants.

The fact that the person who advances the money may have made reasonable enquiries into the circumstances of the case does not render the owner liable for excessive or unreasonable charges.

Appeal from the judgment of Butt, J.

The case is reported *ante*, p. 44.

Action on a bottomry bond given at St. Michael's in the Azores.

The defendants, the owners of the cargo on board the *Pontida*, which was an Italian vessel, required that the amount due on the bond should be decided by the Registrar and Merchants. The lender on bottomry was a banker, the vessel was metalled and felted, the agent charged a commission of five per cent., and of two and a half per cent. on the value of the cargo, and the bottomry premium was twenty per cent. The Registrar and Merchants reduced the claim by 700*l.* 17*s.* 4*d.* in respect of metal and felt, the commission, and the bottomry premium. The plaintiffs, the holders of the bond, claimed to be entitled to the full amount of the bond and objected to the report.

Butt, J., overruled the objections and confirmed the Registrar's report.

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

The plaintiffs, the Comptoir d'Escompte de Paris, appealed.

Phillimore and *Aspinall*, for the appellants.—The plaintiffs, who advanced the money to pay off the claim on the ship, are entitled to recover. The authorities at the Azores approved the expenditure, so that the vessel might have been arrested. The Registrar cannot reduce the amount unless fraud is established. As was said in *Soares* v. *Rahn, the Prince of Saxe Coburg* (1), it is the duty of a foreign merchant, "before he takes a security so onerously affecting the property of others, to satisfy himself by reasonable enquiry that the circumstances of the case justify the master in this exercise of his authority": so that if, as is contended was the case, reasonable enquiries were made by the lender of this money the plaintiffs are entitled to recover the whole amount. The law does not require the lender to see to the application of his money, nor to calculate the expediency of the repairs or supplies. *The Jane* (2), *The Vibilia* (3), *Webster* v. *Seekamp* (4), *Gunn* v. *Roberts* (5), *The Royal Stuart* (6), *The Augusta* (7), *The Alexander* (8), *The Flying Fish* (9), *The Linda* (10), *The Thuringia* (11), *The Maid of Kent* (12), and *Rocher* v. *Busher* (13) were referred to.

J. G. Barnes, for the defendants, was not called on.

BRETT, M.R.—In such an action as this the first question is whether the Court of Admiralty will give a decree in favour of

(1) 3 Moo. P.C. 1.
(2) 1 Dodd Ad. 461.
(3) 1 W. Rob. 1.
(4) 4 B. & Ald. 352.
(5) 43 Law J. Rep. C.P. 233; Law Rep. 9 C.P. 331.
(6) 2 Spinks, 258.
(7) 1 Dodson, 283.
(8) 1 W. Rob. 346.
(9) Br. & Lush. 438.
(10) Swan. 306.
(11) 41 Law J. Rep. Adm. 20.
(12) 50 Law J. Rep. P., D. & A. 71; Law Rep. 6 P.D. 178.
(13) 1 Stark. 27.

the bond at all; it will not do so merely because the bond has been entered into. The preliminary question always is whether the bond was given in circumstances which gave the captain authority to enter into the bond. If there were any laxity in the Court of Admiralty as to this power of captains to bind the owners of the ship, and still more the owners of cargo, the result would be that such owners would be liable to be robbed to an indefinite extent. If it were considered that a mere survey or a consul's allowance were sufficient to establish a bottomry bond, it would be found that mischievous consequences would follow, and owners would be left without sufficient protection. So that on the preliminary question whether the bond is to be allowed to stand at all, the Court of Admiralty looks strictly into the matter and does not allow the bond to stand unless it is entered into in good faith. In considering that question it is, no doubt, material to consider whether the lender made enquiries. If it is found that the bond is extravagant in fact, and if the lender made no enquiries, then the decree of the Court would be that the bond must be set aside. It has, however, been argued that even if the things supplied are not necessary, still that if the person who advances the money, and in whose favour the bond is made, has made reasonable enquiries the bond must be upheld. I do not think that this is so. Suppose the repairs which have been done to the ship are necessaries if looked at from a carpentering point of view, and suppose that the price charged is reasonable, but that the owner had in the port where the repairs were done an agent who could pay for them, and yet that the captain entered into a bond, in such a case it is laid down in the books that the bond cannot be enforced, and that it is wholly void because the bond was not necessary, inasmuch as the owner had an agent in that port who could pay for the work done. Suppose, further, that the person who advanced the money made enquiries as to whether the owner had an agent or not, and that he could not discover—still, in such a case, there being in fact an agent, he would not be able to recover on the bond. Suppose again that a ship is in a foreign port and requires certain repairs to enable her to continue her voyage to the end, but that the captain were to think fit to have her thoroughly repaired and refitted, so as in fact to reclass her, and that money is advanced and a bond entered into for that purpose, it might be said in such a case that there was reasonable ground for the advance of the money; but in such a case, if the repairs were of the extensive description to which I have referred, the bond would not be allowed to its full extent. The question of whether reasonable enquiries have been made or not is important when the Court has to consider whether the bond has been entered into in good faith and whether there has been any attempt to impose upon the owner. If the bond is upheld, then there is a reference to the Registrar and Merchants in order that it may be seen how many of the items were authorised by the position of the captain—that is, how many of them were necessaries, for in such a case the bond is held good for as many of the items as were necessaries, and is held bad in respect of any item which is in excess of that which was necessary. There is no authority in the books for any other kind of reference than this, which is a reference as to matters of detail after the Court has decreed the validity of the bond on the general principles to which I have referred. If the question as to whether reasonable enquiries had been made or not went to the validity of the whole bond, the Court would enquire into that itself, but that question is only of importance with regard to the question of good faith.

The language cited from the cases of *Soares* v. *Rahn* (1) and *The Royal Stuart* (6) is perhaps not quite so accurate as it would have been if the attention of the Privy Council had been directed at that time to this point, but I think that it was intended to apply to the consideration of the question whether the bond had been given in good faith or not, and whether therefore it should be allowed at all. If the bond was disallowed, then there could be nothing to refer to the Registrar and

Merchants. The foundation of the whole doctrine is, according to the English law, that the captain or master has, when away from the owner of the ship, no authority to bind the owner for anything except for necessaries; and with regard to the owner of the cargo the case is even stronger, as the captain is not in that sense the agent of the owner of the cargo. In consequence of the doubt which has suggested itself to the mind of Lord Justice Fry, I will add that there is no evidence in this case that any such reasonable enquiries were made. This captain had no authority except in the case of necessity, and in this case the necessity is disproved; and I will repeat that, assuming there was no necessity to the extent of the expenses incurred, the captain did not possess authority to bind his owner to the full extent of such expenses, even though the person who advanced the money made enquiries which may be called reasonable enquiries. The appeal must therefore be dismissed.

BOWEN, L.J.—I am of the same opinion, and agree both with the reasoning of the Master of the Rolls and with the conclusion to which he has come. It appears to me that the principle which runs through the merchant law of England is that the captain is only the agent to bind the owner in the hour of necessity. To this principle I find no exception in the books, and it seems to me that the argument on behalf of the appellants seeks to introduce a new principle into the law, and to establish that necessity is not the occasion and the limit of the authority of the captain to pledge by way of bottomry bond the credit of the owner. This argument is opposed to all authority, and I cannot agree that apparent necessity will suffice to give this authority if, as was suggested, reasonable enquiries are made by the person who lends the money, for that would be to make that which the lender might consider to be reasonable the extent of the authority of the captain. I do not think that the language used in the two cases in the Privy Council to which reference has been made bear out that argument. If the sentences which have been pressed on us do contain the principle contended for, then I must confess that I am unable to follow them, and I would also say that, even if reasonable enquiries made by the lender would justify him in lending the money and establish the validity of the bond, still in this case there is no evidence that such enquiries were made.

FRY, L.J.—I agree with the conclusion to which the other members of the Court have come, though I am not quite free from doubt. The doubt which has pressed on me is whether where the lender is not a tradesman, nor an agent, but an independent merchant, and where he has made the advances in good faith and after due enquiries, in such case the bottomry bond will not be upheld. It seems that the rule laid down in *The Prince of Saxe Coburg* (1) and *The Royal Stuart* (6) is laid down in somewhat more elastic terms than those in which the Master of the Rolls and Lord Justice Bowen have expressed it to-day. But it is not necessary to decide that in the present case, because there is not in this case any evidence that reasonable enquiries were made.

Appeal dismissed.

Solicitors—Lowless & Co., for appellants; Ingledew, Ince & Colt, agents for Brittan & Co., Bristol, for respondents.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. July 24. } THE DUNELM. *

Collision—Lights—Regulations of 1863 *for Preventing Collisions at Sea, article* 9*—Regulations of* 1880 *for Preventing Collisions at Sea, article* 10 *— Steam Trawler with Trawl down — Fishing Vessels "attached to their nets and stationary."*

By article 9 *of the Regulations of* 1863 *for Preventing Collisions at Sea, "Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light."*

To be "stationary" within the meaning of the article, a fishing vessel must not have more way on than is necessary to keep herself under command whilst attached to her nets. If it is necessary even for the purpose of rendering her fishing more effective that she should have more way on, she is not "stationary," and must carry the lights of a vessel under way.

A steam trawler with her trawl on the ground was making two and a half knots through the water and four and a half knots over the ground, and was carrying no side lights, but merely the white light prescribed by article 9*. She came into collision with the defendants' steamer:*— Held, *that article* 9 *was applicable to trawlers, but that the trawler in question was not "stationary" within the meaning of the article, and should have carried the lights of a steamer under way.*

Judgment of BUTT, J., *affirmed.*

Appeal of the plaintiffs, the owners of the steam trawler *Achievement*, from the judgment of Butt, J.

The action was brought to recover damages for injuries caused to the Steam Trawler *Achievement* by a collision with the defendants' steamer the *Dunelm* in the North Sea, on the 25th of March, 1884, at 11.30 p.m. It was admitted that the *Dunelm* was to blame, but it was alleged on her behalf that the *Achievement* was also to blame for not carrying sufficient lights. At the time of the collision the *Achievement* was going with the tide at a speed of two and a half knots through the water and four and a half knots over the ground. Her trawling gear was on the ground, and she was carrying no side lights, but a good globular light at her masthead, in accordance, as was alleged, with the 2nd paragraph of article 9 of the Regulations of 1863 for Preventing Collisions at Sea.

The evidence at the trial was that trawlers, if possible, fish with the tide, and that they must have some good headway on them.

Phillimore (*Bucknill* with him), for the plaintiffs.

Charles Hall, Q.C., and *W. R. Kennedy*, for the defendants.

BUTT, J.—This is a case in which a point of some nicety has arisen on the interpretation of one or more of the Regulations for Preventing Collisions at Sea. I have come to the conclusion, acting on the advice of the Elder Brethren of the Trinity House, that both these vessels must be held to blame. That the *Dunelm* is to blame there can be no doubt, and indeed Mr. Hall has conceded it to be so. I would therefore only advert to the fact that, though the steam trawler had a good white light exhibited, it was never seen by those on board the steamer until within a distance of from a quarter to half a mile; and that even then they do nothing, although they are in doubt as to the meaning of the white light, whereas I think they ought certainly to have stopped and reversed their engines. Had they done so they never would have sunk this vessel the *Achievement*. That settles the matter as regards the steamer.

Now with regard to the steam trawler the question as to the application of the Regulations for Preventing Collisions at Sea arises. She was carrying a good globular light at the masthead, which, according to the evidence, was some thirty feet above the deck. She was heading about south, with her trawl down, and was making about two and a half knots through the water, and about four and a half over the ground. I am advised by the Trinity Masters that trawlers prefer to go at even a greater rate of speed over the ground,

* *Coram* Brett, M.R.; Bowen, L.J., and Fry, L.J.

and that, as a fact, they must have some way on them. However, taking the speed to have been two and a half knots through the water, what follows? In the year 1880, Regulations for Preventing Collisions at Sea, which with some exceptions are now in force, were promulgated; and had article 10 of those regulations not been suspended by Order in Council, there would have been no difficulty in determining this case—had it ever arisen, which I very much doubt. Now article 10, sub-section *d*, of the regulations provided that "a trawler at work shall carry on one of her masts two lights in a vertical line one over the other, not less than three feet apart, the upper light red and the lower green, and shall also either carry the side lights required for other vessels, or, if the side lights cannot be carried, have ready at hand the coloured lights provided in article 7, or a lantern with a red and green glass, as described in paragraph (*a*) of this article. By a series of Orders in Council that article has been suspended, and remains so suspended up to the present time. The first of these Orders in Council, dated the 24th of March, 1880, I will advert to immediately. It is agreed by the counsel on both sides that there are subsequent Orders in Council in the same terms as the first; and therefore I will confine myself to dealing with the first. By it the operation of article 10 of the present regulations was suspended, and in lieu thereof and in substitution therefor the 9th article of the regulations of 1863 was to continue and remain in force for a certain period. Now then, what is the effect of that Order in Council? Dr. Phillimore, on behalf of the plaintiffs, the owners of the steam trawler, has contended that that Order in Council substituted for the lights prescribed by sub-section *d* of article 10 of the new regulations the one bright light mentioned in article 9 of the old regulations, which bright light was undoubtedly carried by the *Achievement*. Certainly that is an argument which is deserving of very serious consideration, and to which I have given all the weight I think I ought, though I have not allowed it to prevail with me. The conclusion to which I have come is, that the Order in Council does not substitute the one bright light mentioned in article 9 of the old regulations for the lights prescribed by sub-section *d* of article 10 of the new regulations. The view I take of the matter is this: I think the proper view of the Order in Council is that article 9 of the old regulations is substituted for article 10 of the new, in so far, and in so far only, as article 9 applies to any particular case; and that where article 9 cannot be applied, article 10 is suspended, and nothing is substituted for it. If that is the right view of the matter, then I think that in this case article 3 of the Regulations of 1880 comes into operation. Is this trawler to blame then for not carrying side lights? I think it is impossible to say that she was stationary as a matter of fact, and, in my opinion, was not stationary within the meaning of the word as used in article 9. She had four and a half knots way over the ground, and, what is more important, two and a half knots through the water. The Elder Brethren, whose opinion I have taken on this point, think she cannot be considered as stationary. But, further, when one looks at the second paragraph of article 9 of the old regulations it appears to me to apply, and to have been intended to apply, to vessels which are practically stationary. The light required is the light prescribed for vessels at anchor, and I think the article is only applicable to vessels at anchor, or to vessels drifting without way through the water. If that be the right construction, what follows? It follows that the *Achievement* was not carrying the proper lights. Whether that conduced to the collision is a matter which I have not to determine. The question is, might not the absence of the side lights have contributed to the collision. Now what are the facts? I have already said that there was a bad look-out on board the steamer. There was, however, an officer on the bridge, but he also was keeping a bad look-out, because he did not see the *Achievement* until at a distance of from a quarter to half a mile. If the trawler had been carrying the side lights, which I have held she ought to have carried, that officer would in all probability, having regard to the relative positions of these two vessels, have seen the red light as soon as he saw the white light. Seeing the red light in such a position ordinarily

an officer would at once give the order to port, which in this case is not done till later. He does not then do that, but waits until he can make out the meaning of the single white light. It is therefore probable that had he seen a red light he would have ported earlier and in sufficient time to have avoided the collision. In conclusion it appears to me that, having regard to all the circumstances of this case, not only is it possible, but probable that this collision might have been avoided if a red light had been visible; and I therefore pronounce both these vessels to blame.

The plaintiffs appealed.

Phillimore (*Bucknill* with him), for the appellants.—The white light carried by the *Achievement* was in accordance with article 9 (1) of the regulations of 1863. By article 10 of the regulations of 1880 (2) special provision was made for trawlers at work, but that article was suspended by an Order in Council of the 24th of March, 1880 (3), which declared that the operation of article 10 of the new regulations should be suspended, and that "in lieu thereof and substitution therefor" article 9 of the regulations of 1863 should continue in force until the 1st of September, 1881. The suspension was continued by subsequent orders in the same terms, and finally, by an order of the 2nd of February, 1884, until the 1st of September, 1884. The declaration in the order amounts to a declaration that article 10 and the old article 9 cover the same ground: therefore a trawler at work may be within article 9. As to the meaning of the word "stationary," no fishing vessel can be said to be stationary in the sense that she has no locomotion. The meaning of the rule is that the fishing vessel must not have more way on than is necessary to keep her trawl on the ground, and as long as it is on the ground she is stationary—*The Edith* (4). In the case of *The Robert and Ann* v. *The Lloyds* (5), which was on article 9, Dr. Lushington, in summing up to the Trinity Masters, said: "But I should wish to bring to your very particular consideration the meaning of these words, 'attached to their nets and stationary.' Do you consider, in ordinary circumstances, a fishing vessel having the trawl attached to it, generally speaking, is in a state of locomotion or stationary? And if you should be of opinion that when a vessel is simply dredging or scarcely in motion, or only that degree of motion which is indispensably necessary to fishing, are you of opinion that the circumstances of this case are different?" That shews that the word "stationary" applies to cases where the trawl is on the ground. The *Achievement* was doing nothing that was not indispensably necessary for fishing. Supposing that she was not within article 9, yet she was not within article 3, for the regulations of 1880 must be taken as a code, and the existence of article 10 shewed that a trawler at work was not within article 3. Assuming that the *Achievement* was within article 3, yet the absence of side lights could not possibly have contributed to the collision.

The Attorney-General v. *Lamplough* (6) was referred to.

Hall, Q.C., and *W. R. Kennedy*, for the respondents.

[BRETT, M.R.—We are of opinion that article 9 is applicable to the case. What is the construction of that article?]

It applies to vessels attached to nets and having no way through the water, and not to others even though they cannot fish without way. Article 5 of the regu-

(1) By article 9 of the Regulations of 1863 for Preventing Collisions at Sea, "Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light."

(2) By article 10 (*d*) of the Regulations of 1880 for Preventing Collisions at Sea, "A trawler at work shall carry on one of her masts two lights in a vertical line, one over the other, not less than three feet apart, the upper light red, and the lower green, and shall also either carry the side lights required for other vessels, or, if the side lights cannot be carried, have ready at hand the coloured lights as provided in article 7, or a lantern with a red and a green glass as described in paragraph (*a*) of this article."

(3) Order in Council March 24, 1880, set out in Law Rep. 5 P.D. 269.

(4) Ir. Rep. 10 Eq. 345.

(5) Holt's Rule of the Road, p. 55.

(6) 47 Law J. Rep. Exch. 555; Law Rep. 3 Ex. D. 214, 227.

lations of 1880 shews that vessels may be drifting and yet not under way. Vessels attached to drift nets are "stationary"—that is, not mathematically so, but without any way through the water. Article 9 was never intended to apply to trawlers moving with way through the water. Assuming the words "attached to nets and stationary" to include trawlers, a vessel must only have so much way on as to allow her to steer. It cannot be said that a vessel with four and a half knots way over the ground is stationary.

Phillimore replied.

BRETT, M.R.—In this case there was a collision between a steamer and a steam trawler, and it is undoubted that the steamer was in the wrong, and the only question is whether the trawler was also to blame so as to make us come to the conclusion that both vessels were to blame according to the rules of the Admiralty Court. The trawler was in the act of fishing with her trawl net down, and had a white light on her mast, but no red or green lights. The first question is whether, being in that state as to her lights, she committed a breach of any rule which was imperative on her. The first question raised was under what settled rules (if any) of the Orders in Council was she to be; and how were those rules to be interpreted in one particular respect. The collision took place after an Order in Council had been issued, which, as originally published, contained an article 10 which applied to trawlers; but by subsequent orders that article was suspended, and article 9 of a former Order in Council was for a time to be substituted in lieu of article 10. The counsel for the appellants desired to say that we ought to construe the original article 9 by reference to what is contained in article 10. But that is contrary to every rule of construction. Article 9 must be construed as on the day on which it was enacted—that is, when article 10 did not exist. The only result of the order is that article 10 is to be taken out of it, and that the order is to be read as if the original article 9 was there. When it is there, article 9 is to be construed as if it was in the former Order in Council; therefore this vessel was under the new Order in Council by which article 9 was substituted for article 10.

Then arise two questions—first, whether the trawler is the sort of vessel which can be within article 9; and secondly, if so, whether, in the circumstances in which she was, she ought to have acted under article 9, or under article 3, which is applicable to her as a steamer. About the first question I have no difficulty. Fishing with drift and trawl nets was well known before the Order in Council enacting rule 9 was passed, and vessels fishing with any kind of nets were all fishing vessels attached to nets. Therefore it must be assumed that the Legislature knew of the vast fishing trade on the coast of England, and that vessels were fishing with nets attached to them. Thus, when they use the words "attached to nets," they must have meant to include vessels attached to trawl nets as well as those attached to other nets. There is no distinction made as to the nets. I think it is clear that, when the Order in Council was passed, trawlers were generally sailing vessels, and that they were such vessels as might come within article 9. It is not in all circumstances that a fishing vessel is allowed to carry the light which is prescribed in that article: unless she is at anchor, or attached to nets and stationary, she is not in circumstances which allow her to avail herself of the rights given by that article, and in such a case she is an ordinary sea-going vessel, and would have to carry lights accordingly. There is nothing in article 9 which excludes a steamer if she is a fishing vessel. Therefore the question is whether the *Achievement* was within the category in article 9, for, if not, she was a steamer within the other rules, and ought to have carried a white light if at anchor, and if under way, red and green side lights.

That leads to the consideration of article 9, which is difficult to construe. My view of an Act of Parliament (and this article is equivalent to an Act of Parliament) is that an Act which is made applicable to a large trade or business is (if possible) to be construed, not according to the most strict and nice rule of interpretation of language, but according to a reasonable and business interpretation with

The Dunelm (App.), Adm.

regard to the trade or business with which it is dealing. Unless one is bound to come to such a conclusion by the language, which would then have been used by extraordinary inadvertence, it would be impossible to suppose that those who had to enact provisions with regard to a large trade or business had so legislated as to prevent the business being carried on at all. The article applies, first, to fishing vessels at anchor—that is, when they are not fishing—and then they are to carry a white light. The article then says, "or when attached to their nets and stationary." Is that to mean "stationary" as equivalent to being at anchor? It is not necessary that there should be an anchor down. For instance, a vessel may make fast to moorings, which may be fastened to the ground by something which is not an anchor, but is equivalent to it. It could not be said that such a vessel was not at anchor. So fishing-boats sometimes drop down a large stone; and in such a case they would be at anchor. Therefore, "being attached to nets and stationary" means that the vessels are not in the same state as when at anchor. To my mind those words are meant to be applicable to the time when the vessels are fishing and attached to nets, and have not the same command over themselves as when under way, but are more like vessels at anchor than vessels under way. As was pointed out, if it is necessary to go ahead, they cannot do so on account of their nets. If the vessel were a steamer, and were to back, she would back into her own nets, and would be in an extremely helpless state. If a sailing vessel was to wear in order to avoid something she would be into her nets; if she tacked considerably, so as to bring herself into her nets, she would get into mischief; she also could not back without getting into her nets. Therefore vessels attached to their nets are more like vessels at anchor than vessels under way. Therefore, no doubt, it was for that reason that provisions were enacted with regard to fishing vessels whilst they were doing that which would distinguish them from vessels under way. If fishing vessels, while in that crippled state, were to carry the same lights as vessels under way and in command of themselves, they would mislead approaching vessels, who would act as if they were meeting vessels under way. That shews that this legislation was intended to apply to the vessels whilst fishing.

If that is so, then what is the meaning of the word "stationary"? It was first said that it must be mathematically stationary—that is, that with regard to the land the vessels were not to be passing by the land at all, but to be stationary. It strikes one at once that, unless the vessels are anchored, they cannot be stationary on the water, because they must be going with the tide. Therefore the word cannot mean mathematically stationary. Then it was suggested that they must not have any way through the water. We are told by experienced people that, according to the mode of fishing with drift and trawl nets, the vessel must go with the tide. If that is true, and there is no way on the vessel through the water, she cannot steer at all. There may be no harm in a vessel not having command over herself in a calm sea; but if in other circumstances a vessel cannot steer, she is in positive danger herself; and if she cannot fish without any command over herself, that construction makes fishing impracticable. If the Legislature meant to say that the vessel was to have no way on, they might at once have said that she should not fish at all. It seems to me clear that "stationary" cannot mean either mathematically stationary, so that the vessel is not going by the land, or that she has no way on her through the water. But it is a very strong word, and must have been intended to be strictly interpreted. When you come to consider what I have said you may at once see what the Legislature meant. If a vessel is more in the condition of being a vessel under way than of a vessel at anchor, then she would mislead other vessels if she carried lights which shewed that she was like a vessel at anchor. Therefore, if a fishing vessel is more like a vessel under way than a vessel at anchor, it seems to me that you must so construe the word "stationary" as to say that she is not stationary. We are bound to give full effect to such a strong word as "stationary." It cannot mean mathematically steady, or that the vessel has no way on;

therefore it must mean that she has some way through the water. How far can you go so as to make the rule practical for her and for other vessels, so as to allow her to have way through the water and yet give effect to the word "stationary"? Upon the best consideration we must say that she must not be going faster than is necessary to keep herself under command whilst attached to her nets. It will follow from that that it will not be sufficient to say that the vessel is going so fast as to enable her to fish with the best advantage or effect, because it may be that she will desire to go faster for the purpose of getting to the fish faster. That would be more applicable to drift than to trawl-net fishing, which practically must be very slow because the net is on the ground. Now comes a much more difficult case. Suppose a vessel to be such that she cannot fish without going faster than is necessary to keep herself under command, or that the weather is such as to render that necessary. In that case, according to the rule I have laid down, she either must not fish at all or must fish with side lights. Therefore, giving the best consideration to this rule that I can, and having shewn some instances (there may be many others) in which the rule may be broken, I lay down the rule of construction that, although the word "stationary" does not mean mathematically stationary, or that the vessel must not be going through the water, yet it must be confined to this: that in order to be stationary she must not go faster than is necessary to keep herself under command whilst attached to her nets. Whether she is going faster is a matter of evidence, and almost always is a question for the nautical assessors.

In those circumstances we have to take the evidence in this case. I take it to have shewn that this trawler with her nets down was going two and a half knots through the water and four and a half knots over the ground. The test, to my mind, is not over the ground, but through the water. We asked the assessors whether, assuming that the *Achievement* was going at two and a half knots, she was going faster than was necessary to keep herself under command whilst attached to her nets. They said that she was. That shews she was not within the category of rule 9; therefore she was within rule 3; and instead of having a white light only, she was in circumstances in which she should have had red and green side lights and a white light at the foremast head. Therefore she was to blame, unless another proposition which was put forward was good—namely, that that could not possibly have conduced to the accident. It is sufficient to say that it was impossible to accept such an argument, because the officer in command of the steamer, seeing only a white light, might have been induced to act differently from what he would have done if she had lights shewing that she was a steamer under way. Therefore, although I admit that this rule, strictly interpreted as I have interpreted it, makes it very difficult for trawlers to know what to do, because if they are within rule 9 they are wrong in having a red and white light, as if they are within rule 9 they must have a white light alone; yet I do not sufficiently see my way to construe the word "stationary" in any larger sense, though that would have been very desirable. Therefore I think the conclusion must be (though I do not agree with the reasons of the learned Judge, who construed the rule too strictly) that the appeal must be dismissed.

BOWEN, L.J.—I am of the same opinion. I agree entirely with the view of the Master of the Rolls and his exposition and interpretation of the rules, and I add a few words only on account of the importance of the subject. I wish emphatically to call the attention of the Board of Trade to the imperative necessity of dealing in some way with the case of trawlers. Some line should be taken so that trawlers may know in what way to fish, otherwise this legislation is a mere trap. I agree, also, from a business point of view, that one would have been glad to lay down such a construction of the word "stationary" as to allow all trawlers to know that they may use the prescribed white light when fishing in the ordinary way, without having to determine the difficult question at any particular moment as to the exact pace at which their vessels may be going through the water. As to the construction of

article 9, it seems to me that the result of our judgment is that, *prima facie*, when fishing, steam trawlers are within rule 3 and sailing trawlers within article 6; but that they are required to use the white light within article 9 of the regulations of 1863 if they come within the description of being either "at anchor, or attached to their nets and stationary." The nets are supposed to be out; the words "and stationary" not only mean something in addition to being attached to nets, but must also be read consistently with the attachment to nets which is to accompany the stationary condition. I adhere to what the Master of the Rolls has said as to construing words like these in a maritime rule in a businesslike sense. It is the subject-matter which gives colour to the words used in an Act of Parliament. It must be observed, first, that the fishing vessels which are dealt with are, first, vessels at anchor—that is, those which are attached to the land and do not move through the water; but there is another class of vessels dealt with, which are not exactly vessels at anchor, because they are moving with the water, as otherwise they could not be attached to their nets, and they rest upon the water as distinguished from those resting upon the land. I do not think the word "stationary" is the exact antithesis of "under way," but it means substantially resting upon the water and only moving about so much as is consistent with keeping to the fishing station upon the water. That leads directly to the test given by the Master of the Rolls. A vessel must have a certain motion if she is going with the tide, and for the purpose of keeping herself under command and of managing her nets; but that is all. Therefore it is a question of fact whether a vessel is stationary in this popular and seafaring sense of the term. A vessel going two and a half knots through the water is not stationary within the meaning of the rule. I think that, in the exposition of the Master of the Rolls, there is nothing inconsistent in it with the direction of Dr. Lushington in *The Robert and Ann* (5).

FRY, L.J.—I concur in the judgment of my colleagues. The question turns upon a few words in the 2nd section of article 9 of the Order in Council of 1863. What is the meaning of the word "stationary" in that article? The counsel for the appellants asked us to read "and" as "or," so as to say that the section applies to boats "attached to nets or stationary." That would be to do violence to the language and the intention of the Legislature. It is plain that two conditions must be satisfied by any interpretation to be given to the word "stationary." First, it must describe a common condition of fishing vessels and boats; in the next place, it must express some condition of fishing vessels which commonly goes with attachment to nets. Perhaps the most rigorous sense of the word "stationary" is the negation of any motion of the vessels with regard to the ground. Is it a common condition of fishing vessels to be attached to nets but not to move over the ground? The answer is that it is not. One definition that was suggested would deny any motion through the water. Is it a common condition of fishing boats to be attached to nets and not to move at all through the water? The answer is that it is not; they must have some way on in order to keep their course. But it is a common condition for fishing boats to be attached to nets and to have a little way on—just so much as is necessary to keep their course and no more. That is the condition which is expressed by the word "stationary." Therefore it appears to me that, if a fishing boat has no more way on than is necessary in order to keep her course, and that necessary amount of way is but little, she is stationary within the meaning of the rule; but that if she has more way on than is necessary for that purpose, or if the necessary amount of way is considerable, she is not a stationary vessel within the meaning of the rule. Therefore the only enquiry is whether the *Achievement* had more way on than was necessary in order to keep her course, or whether it was considerable? The answer is, she had more way on than was necessary for that purpose, and therefore she is not within the rule. As to the other parts of the case, I adopt the judgment of the Master of the Rolls.

BOWEN, L.J.—I wish to say distinctly that, by motion which is necessary for the

management of a vessel's nets, I do not mean such an amount as might be necessary to make the fishing more effective. On that point I adopt the judgment of the Master of the Rolls. But I mean only such as is necessary to prevent the vessel being encumbered by her nets.

Appeal dismissed.

Solicitors—Botterell & Roche, for appellants; T. Cooper & Co., agents for Hines & Sons, Sunderland, for respondents.

ADMIRALTY.
1884.
Aug. 4.

THE BELFORT.

Charter-party executed Abroad—Stamp Act, 1870 (33 & 34 *Vict. c.* 97), *ss.* 15, 66, 67, *and* 68.

A charter-party wholly executed abroad may be stamped within two months after it has been first received in the United Kingdom, as provided by section 15 *of the Stamp Act*, 1870.

Semble,—*That such a charter-party must be stamped with an impressed and not an adhesive stamp.*

Appeal from the County Court of Glamorganshire in an action for demurrage.

The plaintiffs were the owners of the steamship *Belfort*, and the defendants were the charterers. The charter-party was executed by all parties thereto on the 30th of November, 1883, at La Rochelle, in France.

On the 13th of March, 1884, the original charter-party was received unstamped in England by the plaintiffs' agent for the purposes of the action, and on the 17th of March was sent by him to Somerset House for the purpose of being stamped.

On the 2nd of April the charter-party was returned by the Inland Revenue Office unstamped, with the following memorandum :—

"If this charter-party was executed and intended to be dated as at Cardiff, it cannot now be stamped under any circumstances. But if signed and intended to be dated as at La Rochelle, an adhesive stamp of 6*d.* must be affixed and cancelled within ten days after its receipt in the United Kingdom, and before being signed by any party within the United Kingdom. But the impressed stamp is not applicable to such a case."

On the 2nd of April the plaintiffs' agent in England affixed a sixpenny adhesive stamp on the charter-party, and cancelled such stamp.

At the hearing of the action the plaintiffs proposed to put in the charter-party; but objection was taken by the defendants to its admission, on the ground that it had not been stamped in compliance with the provisions of section 68 of the Stamp Act, 1870. This objection was allowed by the County Court Judge, who thereupon gave "judgment for the defendants, subject to the decision of the Queen's Bench Division upon the question as to the stamp, to be stated by the Inland Revenue, if they think fit."

Thereupon, on the 8th of April, the plaintiffs' agent wrote to the Inland Revenue Commissioners, enclosing the charter-party, and asking for their opinion as to the sufficiency and legality of the stamp. The commissioners, being of opinion that the case came within section 15 of the Stamp Act, stamped the charter-party with a sixpenny impressed stamp and an adjudication stamp, intimating that the document was duly stamped, and returned it to the plaintiffs' agent.

The plaintiffs thereupon moved the County Court Judge for a new trial; but the application was refused, and the plaintiffs appealed to the Admiralty Division of the High Court of Justice.

J. Gorell Barnes, for the appellants.—This charter-party having been wholly executed out of the United Kingdom comes within the provisions of section 15, and may therefore be stamped at any time within two months after being received in this country. The later sections on which the other side rely—namely, sections 66, 67, and 68—do not apply. Section 66 relates to charter-parties executed in this

country; section 67 to charter-parties executed by one party abroad and then sent to this country to be executed by the other contracting party; and section 68 cannot apply to charter-parties such as this, as in many cases a charter-party executed abroad could not possibly reach this country within one month after its execution.

Phillimore, for the respondents.—Section 15 only applies where there is no express provision to the contrary. Now it is submitted that section 66, 67 or 68—whichever may be held to apply—is a direct provision which takes the case out of section 15. Those sections expressly deal with charter-parties. The argument that charter-parties executed in some country abroad where it is impossible for the document to reach this country within one month cannot prevail, for persons who contemplate entering into charter-parties abroad should provide themselves with adhesive stamps. Even if the case comes within section 15, the County Court Judge was right to reject the document on the first occasion, as section 23 provides that an adhesive stamp can only be used where there is express provision in the Act to that effect.

THE PRESIDENT (SIR JAMES HANNEN).—I am of opinion that this document was properly stamped when it was produced on the second occasion before the County Court Judge. Section 15 of the Stamp Act is general, and provides that "Except where express provision to the contrary is made by this or any other Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of ten pounds, or where the unpaid duty exceeds ten pounds, of interest on such duty at the rate of five per cent. per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty; and the payment of any penalty or penalties is to be denoted on the instrument by a particular stamp. Provided as follows:—Any unstamped or insufficiently stamped instrument which has been first executed at any place out of the United Kingdom may be stamped at any time within two months after it has been first received within the United Kingdom, on payment of the unpaid duty only. The commissioners may, if they think fit, at any time within twelve months after the first execution of any instrument, remit the penalty or penalties or any part thereof."

Now this was a document first executed out of the United Kingdom, and it has been stamped with an impressed stamp within two months after it had been first received in the United Kingdom. It lies therefore on the party who is impeaching the legality of the stamping to shew that there is "express provision to the contrary." The express provision to the contrary relied on is to be found in the sections specially relating to charter-parties.

Section 66 is as follows:—"The duty upon any instrument chargeable with duty as a charter-party may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is last executed or by whose execution it is completed as a binding contract."

I am of opinion that that section does not refer to charter-parties executed abroad, but to those executed in this country. When we come to section 67, the marginal note, which is "as to charter-parties executed abroad," is strongly confirmatory of the contention that section 66 does not apply to charter-parties made abroad. This section enacts that, "Where any document chargeable with duty as a charter-party and not being duly stamped is first executed out of the United Kingdom, any party thereto may within ten days after it has been first received within the United Kingdom, and before it has been executed by any person in the United Kingdom, affix thereto an adhesive stamp denoting the duty chargeable thereon, and at the same time cancel such adhesive stamp, and the instrument with an adhesive stamp thereon so affixed and cancelled shall be deemed to be duly stamped." That contemplates the case of a charter-party first being executed abroad and then being executed in the United Kingdom. That section, therefore, does not apply to this particular case, because the charter-party here has been executed wholly abroad.

The Belfort, Adm.

Section 68 enacts that "An executed instrument chargeable with duty as a charter-party, and not being duly stamped, may be stamped with an impressed stamp upon the following terms—that is to say, within seven days after the first execution thereof, on payment of the duty and a penalty of four shillings and sixpence; after seven days, but within one month after the first execution thereof, on payment of the duty and a penalty of ten pounds; and shall not in any other case be stamped with an impressed stamp." I am of opinion that that section does not relate to a document wholly executed out of this country. It seems to me that it was never intended that in case of charter-parties executed abroad the parties should have adhesive stamps with them. Dr. Phillimore has therefore failed to shew that there is any "express provision to the contrary," and, if so, the case comes within section 15, and the stamping has been done within the time prescribed by that section. I would only add that in my view the course taken has been most productive of waste of time, rendering it necessary that the whole case should be tried a second time. The proper course would have been to have ordered an adjournment in order that this point might be settled. The result, therefore, is that this appeal must be allowed and a new trial ordered.

BUTT, J.—I am of the same opinion. I think that this document was properly stamped under section 15, and that the case comes within the sub-sections of that section. It is provided under the first sub-section that with regard to instruments executed abroad they may be stamped within two months after they have been received within the United Kingdom; and by the second sub-section power is given to the commissioners to remit the penalty if they think fit. Now, unless this case is taken out of section 15 by some express provision to the contrary, it seems clear that the commissioners have power to do that which they have done. For the express provisions to the contrary we are referred to sections 67 and 68. I do not, however, think that those sections apply to this case where the instrument is wholly executed out of the United Kingdom. Section 67 applies to a charter-party first executed out of the United Kingdom, because it speaks of something being done within ten days after it has been received in the United Kingdom. Therefore I think that there is nothing to take this case out of the operation of section 15, and that this appeal must be allowed.

[On the application of the appellants their Lordships gave the appellants the costs of the appeal, but made no order as to the costs in the County Court.]

Solicitors—Ingledew, Ince & Colt, agents for Ingledew, Ince & Vachell, Cardiff, for appellants; Stokes, Saunders & Stokes, agents for Downing & Handcock, Cardiff, for respondents.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. Feb. 28. July 30. } THE CITY OF CHESTER.*

Practice—Salvage—Costs of Repairs to Salving Ship — Evidence of, when receivable.

Per BRETT, M.R.—*The Judge of the Admiralty Division is not bound in every salvage action to receive ex debito justitiæ evidence of the costs of repairs caused by the performance of the salvage services and of the detention of the salving ship whilst such repairs are being executed; nor is he bound to decree in terms as part of his award that such a specific ascertained amount shall be paid to the salvors for damages and costs incurred in rendering the services as shall be sufficient to indemnify them. It is in the discretion of the Judge whether he shall receive or reject such evidence, and an amount in respect of the damages incurred may, if proper under the circumstances, be included in his award.*

Per BAGGALLAY, L.J., *and* LINDLEY, L.J. —*Where, in a salvage action, it appears that the value of the property saved is ample not only to defray any amount of remuneration which could be reasonably awarded to the salvors, but also to leave*

* *Coram* Brett, M.R., Baggallay, L.J., and Lindley, L.J

a substantial surplus to the owners of the property saved, evidence ought to be received to shew the amount of the loss and damages actually sustained by the owners of the salving ship with a view to fixing the remuneration at such a sum as will cover such losses and remunerate them for such further risk as they ought to be compensated for.

The De Bay (52 Law J. Rep. P.C. 57) *and* The Sunniside (52 Law J. Rep. P., D. & A. 76) *discussed.*

Appeal by the plaintiffs from a decision of Butt, J.

On the 10th of March, 1883, the steamship *Missouri*, of 5,146 gross tonnage, two days out from Boston, on a voyage from that port to Liverpool, fell in with the *City of Chester*, a steamship of nearly equal size, and bound for Liverpool from New York; the *City of Chester* was making signals of distress, having been disabled four days previously by the breaking of her screw shaft.

The *Missouri* towed the *City of Chester* to Halifax, a distance of 220 miles, where the two vessels arrived on the evening of the 12th of March; on the 14th the *Missouri*, having taken in an additional quantity of coals, and fodder for the live stock, of which her cargo in part consisted, proceeded on her voyage to Liverpool, where she arrived on the 27th of March.

The action was brought by the owners, master, and crew of the *Missouri* to recover salvage for the services so rendered by them to the *City of Chester*. It was admitted for the purposes of the action that the value of the *Missouri* was 85,000*l.*, and of her cargo and freight 104,047*l.*, and that the value of the *City of Chester* was 90,000*l.*, and of her cargo and freight 89,535*l.*, and the *City of Chester* had 111 passengers, the *Missouri* five only.

In their statement of claim the plaintiffs alleged that the *Missouri* sustained considerable damage whilst rendering the salvage services, and that it became necessary, upon the arrival at Liverpool, to have her thoroughly overhauled and repaired, and that the total cost of such repairs, including the loss arising from her detention whilst they were being executed, would amount to a sum of between 5,900*l.* and 6,400*l.*, and the plaintiffs claimed such an amount of salvage as to the Court might seem just, and if necessary a reference to the Registrar and merchants to ascertain the amount of damage sustained by the *Missouri* in rendering the salvage services.

The action came on for trial before Butt, J., on the 30th of April and the 1st of May, 1883. In the course of the trial the plaintiffs tendered evidence as to the costs of the repairs and the detention of the ship whilst they were being executed. The reception of such evidence was objected to by the defendants, and the Judge declined to receive it or to refer the matter to the Registrar and merchants. In the result he awarded the sum of 6,500*l.*, in the proportions following—namely, 4,500*l.* to the owners, 500*l.* to the master, and 1,500*l.* to the crew.

The plaintiffs appealed.

Russell, Q.C., and *Phillimore*, for the plaintiffs, contended that the plaintiffs were entitled to give evidence of the damages and expenses incurred; that it had been the invariable practice of the Admiralty Court to receive such evidence; and that the Court should encourage salvage by allowing such expenses as were now claimed to be paid to the salvors—*The De Bay* (1), *The Sunniside* (2), *The Oscar* (3), *The Salacia* (4), *The Jane* (5), *The Saratoga* (6), *The Mud Hopper* (7), and *The Silesia* (8).

Pritchard's Admiralty Digest, tit. "Salvage Awards," Nos. 10, 68, and 216, were referred to.

Webster, Q.C., and *Myburgh, Q.C.* (with them *Bucknill*), for the defendants, contended that salvage services are rendered for better or worse, and that salvors got at one time a greater reward than they did at another; that the Judge had not

(1) 52 Law J. Rep. P.C. 57; Law Rep. 8 App. Cas. 559.
(2) 52 Law J. Rep. P., D. & A. 76; Law Rep. 8 P. D. 137.
(3) 2 Hag. Adm. 257.
(4) 2 Hag. Adm. 262.
(5) 2 Hag. Adm. 338.
(6) Lush. 318.
(7) 4 Aspin. M.C. 103; 40 Law Times N.S. 462.
(8) 50 Law J. Rep. P., D. & A. 9; Law Rep. 5 P. D. 177.

rejected evidence of the fact that towage services had been rendered; and that the Admiralty Court had in practice invariably rejected evidence of money actually spent except in so far as it was an actual current expense. *The Martha* (9), *The De Bay* (1), and *The Sunniside* (2) were also referred to.

Russell, Q.C., replied.

Cur. adv. vult.

The following judgments were delivered on the 30th of July :—

BRETT, M.R.—At the hearing of this case before Mr. Justice Butt, the salvors, after having given general evidence that the *Missouri* was strained and her crank shaft injured, claimed, as of right, to give in evidence, either before the Judge or the Registrar and merchants before the decree, the specific particulars of the injuries to the ship and machinery, and the specific particulars of the items of the cost of repairing such injuries, and of the estimated time necessary for repairing the same, and of the consequent loss to the owners in the nature of demurrage. Mr. Justice Butt declined to admit evidence of such particulars either before himself or before the Registrar and merchants as required. He further declined, though required to do so, to award any specific sum in respect of the injuries to the salvors' ship or to her machinery; but awarded generally to the owners of the *Missouri*, as distinct from the more direct salvors, the sum of 4,500*l.* The owners of the *Missouri* appealed, insisting upon their right *ex debito justitiæ* to give, either before the Court or the Registrar and merchants before the decree, the evidence which they proffered at the trial; they insisted that there had been a mis-trial on the ground of improper rejection of evidence; they insisted that the Judge is bound, on being so required, in every salvage case to admit such evidence; or at all events that he was bound to receive such evidence in the present case.

Upon an appeal brought on such grounds the question is not whether the Judge ought or ought not in estimating salvage reward to take into account and therefore to receive evidence of the fact that in and by rendering the salvage service the property of the salvor has been injured, but whether in such a case as the present the Judge is bound before making his decree to hear evidence either personally or through the Registrar and merchants of all the specific particulars of such injury and of all the specific particulars of the loss to the salvors occasioned thereby.

It was argued that the Judge is bound to receive such evidence in every case, and therefore of course in this. Or if not in every case, he was in the present case, because the value of the property saved was amply sufficient to allow an amount of reward which would cover the losses suffered by the salvors in rendering the salvage service. In such case it was said the Judge is bound to grant an amount of reward sufficient to cover such losses, and therefore bound to ascertain exactly what those losses are. Or it was said he was bound to ascertain such losses in order to consider judicially whether he would or would not grant an amount of reward sufficient to cover them.

As to all these contentions the answer depends upon a preliminary question—namely, whether in every case, or in the particular case suggested, the Judge is bound to award a sum sufficient to indemnify the salvor. For if he is not, and if from other circumstances in the case he is rightly of opinion that he ought not, the proposition that he must hear the evidence, which upon the hypothesis has become clearly immaterial, is absurd. And an absurd proposition is not a principle of law. Now as to the first, that is to say the absolute proposition, it is clearly not true. Suppose the loss to the salvors by reason of injury to their property, the result of using it in the salvage service, is equal to or greater than the value of the property saved, the award obviously cannot cover such loss—otherwise the supposed salvage would be a saving of nothing. Then the particulars of such loss are immaterial. Suppose it is at the commencement of, or becomes apparent in the course of the hearing, that the loss of the salvors is greater than half the value of the property saved, it is immediately obvious that the amount to be awarded cannot cover the loss of the salvors, because even in the case of derelict

(9) 3 Hag. Adm. 434.

the Court of Admiralty has hardly ever under any circumstances, and in no known case of non-derelict has ever awarded, as for salvage reward, more than half of the value of the property saved. In such case again, therefore, the suggested evidence is obviously immaterial. It is immaterial even for the purpose of obliging the Judge to consider whether he will or will not grant an amount of reward sufficient to cover the loss; because by the hypothesis circumstances have made it clear that he cannot.

Then let us consider the more limited proposition. Suppose the danger to the thing saved to have been small, though sufficient to raise a salvage claim, is it true to say that in such a case if by accident, without fault or negligence, the property of the salvor is greatly injured, the whole consequence of such accident is, according to the large equity of Admiralty law, to fall upon him whose property is saved? Is the mere fact that the property saved is sufficient in value to allow the claim for injury to the salvor to be met, conclusive to oblige the Judge, without regard to the other circumstances of the case, to allow the claim? To say that it is would be contrary to the whole principle of salvage reward and the whole long-continued course of its administration. The danger of an injury to his property so large as to make it wrong on the equities of the case to place the whole consequences of such injury on the owner of the property saved, is one of the risks, by no means the only risk, which is run by all salvors. The Judge is bound to consider, not only the circumstances of loss having been incurred by the salvor, but in conjunction with it all the other circumstances which enter into the problem of what in the particular case is a reasonable and between the parties an equitable amount of salvage reward. There is no jurisdiction known which is so much at large as the jurisdiction given to award salvage. There is no jurisdiction known in which so many circumstances, including many beyond the circumstances of the particular case, are to be considered for the purpose of deciding the amount of salvage reward. All these circumstances have been repeatedly enunciated by Lord Stowell, Dr. Lushington, and others; it is useless to repeat them. It follows that there is no jurisdiction known the administration of which is more within the discretion of the Judge who has to administer it. The moment the Judge is of opinion, and is not unjustified in being of opinion, that he cannot give, as a part of the amount to be awarded, the specific loss incurred by the salvor, it becomes impossible to say that he is bound, at whatever expense to the suitors or of waste of his own time, to listen to evidence of the particulars of such loss. It follows that in no case can it be predicated that the Judge is bound, from the mere fact that it is proffered to him, to admit and entertain and consider such evidence. It may be that in some particular case it can be shewn that for want of the knowledge to be obtained from such evidence the Judge has not justly determined the amount of salvage which he has awarded. But in such a case the appeal succeeds, not on the ground of the rejection of the evidence, but on the ground of the inadequacy of the amount awarded. The Court of Appeal cannot come to the conclusion that the evidence has been improperly rejected until, from the other circumstances of the case, it has concluded that the only reasonable exercise of discretion was to allow the exact amount of the salvor's loss, or that the discretion cannot even on the appeal be fairly exercised without the knowledge of the exact amount. It cannot come to this conclusion until it is clearly of opinion that the amount awarded is in the particular case unreasonably too small, or that it cannot tell whether it was or was not unreasonably small. In truth, a clear conclusion that the amount awarded is unreasonably too small or too large, or that there are not means of determining whether it was unreasonably too large or too small, is the only ground on which an appeal in the case of a salvage award can be successful. The contention, therefore, of the salvors in this case that the Judge was bound *ex debito justitiæ* to receive at the time and in the manner proffered the evidence proffered to him, on the mere ground that it was proffered, fails. In no case has it ever been held that the Judge is bound to receive such evidence; it must

have been offered and rejected many times. It does not appear to have been received in more than a few cases in the books. The absence of any decision to shew that it must be received is fatal to the appellants' contention. I have enquired from the most experienced officers of the Court of Admiralty, and find that no one of them has ever known or heard of any case in which in a salvage action such an enquiry was ever referred to the Registrar and merchants before the decree, or otherwise than as a means of working out a decree which has already adjudged that a part of the salvage reward shall be the actual cost of the repairs and their consequences. The cases of *The Sunniside* (2) and *The De Bay* (1) are not in point; in both cases the evidence was received.

In *The Sunniside* (2) counsel for a salvor asked questions as to the loss of profits occasioned to the trawler by engaging in the services, and also as to the cost of repairing damages occasioned to the vessel by rendering the services in question. This was objected to as inadmissible, but was admitted. In his judgment Sir James Hannen says, "I was asked to reject that evidence; but this I did not consider myself at liberty to do, because it appears to me it was admissible as an element to be considered in awarding the remuneration to be paid to a vessel which had rendered salvage services. I remain of the opinion which I expressed yesterday, after considering it further, that it is not taken in ordinary cases as a fixed figure always to be allowed as in the nature of damages, and then to be added to the amount awarded for the actual salvage service. As a rule it appears to me that the amount for loss of trade and so on cannot be taken as an actual figure in calculating what the salvage reward is to be. The same remarks apply, though not with the same force, to the question of damage done; but there is a reason in this case why a distinction should be drawn, and I propose to do it for the purpose of this case only."

In *The De Bay* (1) it was contended that some of the items ought not to be taken into consideration at all, as for instance the loss on charter, and it was further contended that in no case ought the items of loss or damage to the salving vessel to be allowed as "moneys numbered," but that they should only be generally taken into account when estimating the amount to be awarded for salvage remuneration. "Their Lordships," it is stated at p. 563, "are of opinion that it is always justifiable, and sometimes important, when it can be done, to ascertain what damages and losses the salving vessel has sustained in rendering the salvage services"; and later they add, "If there is a sufficient fund, and the losses sustained by the salvor are ascertained, it would be unreasonable to reject the assistance to be derived from that knowledge when fixing the amount of salvage reward, and their Lordships are unable to appreciate the argument that that which is known may be taken into account generally, but not specifically." This is only a decision that the Judge may receive the evidence and may award specific sums. It is no decision that he must do either. That the Judge might in this case, and that a Judge may in any case, receive such evidence is a proposition which is incontestable. Whether having received such evidence the Judge has rightly acted upon it is a matter of appeal. But that is an appeal as to the amount awarded. That he may act upon it by directing, as a part of his award, that the specific ascertained amount of the loss be paid to or be realised by the salvor is undoubted, if the other circumstances do not render it unjust that such amount should be paid or realised. Such a specific direction has been given in many cases. It may, however, not be unworthy of observation that in all such cases the value of the property of the salvors has been small. But it follows from the considerations brought forward in this judgment that the Judge is never bound to decree in terms, as a part of his award, that such specific ascertained amount shall be paid or realised. The Judge is always entitled to award a general sum. It follows that he is not bound to receive evidence of a specific ascertained amount. It remains to be considered whether in the present case we are of opinion that the Judge could not make a reasonably just award without hearing and considering the proffered evidence. I cannot so adjudge.

But after consulting the learned Judge of the Admiralty Court, and considering the large value of the property saved, and the undoubted fact that a large injury was suffered by the appellants, I have, with the assent and concurrence of the learned Judge of the Admiralty Court, undertaken to reconsider his decree. In the result I have come to the conclusion to vary his decree, as follows: We decree the appellants 1,000*l.*, and the cost of repairs rendered necessary by the straining and other injuries to the *Missouri* caused by the salvage services, and the real cost, if any, to the owners of the *Missouri* of any crew kept and paid by them for the service of this ship whilst she was under repair. Such costs must be ascertained by the Registrar and merchants, and the costs of this appeal must abide the result of such reference, for it may be that the appellants will not obtain in the event more than they have been awarded by Mr. Justice Butt. If, however, the appellants prefer as an alternative to allow Mr. Justice Butt's award to stand, they may keep it, each side paying their own costs of the appeal.

BAGGALLAY, L.J.—This is a salvage action, and the question involved in the appeal is, by what rules, if any, a Judge should be guided, in such an action, in receiving or rejecting evidence, tendered on behalf of the salvors, as to the amount of costs incurred by them in repairing injuries occasioned to their ship by rendering the salvage services, and of the loss arising from the detention of their ship whilst such repairs were being executed.

On the part of the appellants, who are the plaintiffs in the action, it has been contended that they were entitled *ex debito justitiæ* either to have such evidence received and dealt with by the Judge himself, or to have the matter referred to the Registrar and merchants; whilst it has been urged, on behalf of the respondents, that it was at the absolute discretion of the Judge to receive or reject such evidence, and that the exercise of such discretion could not, consistently with the recognised practice in salvage cases, be reviewed. In my opinion, each side, in so contending, put their case too high.

As a second point, it was urged, on behalf of the appellants, that under the circumstances of the present case certain evidence which was tendered and rejected by the learned Judge ought to have been admitted.

In order that I may make my views clear as to this alternative contention of the appellants, I must refer, and I shall do so very concisely, to the circumstances under which this appeal has been brought. [The learned Judge having stated the facts as already set out, continued:] It is not in dispute that, at the time when the *Missouri* took the *City of Chester* in tow, and throughout the towage to Halifax, the weather was bad, that the towage was very heavy, and that after the salvage service it was found that the *Missouri* was strained and her crank shaft fractured. In reference to the fracture, the learned Judge, in the course of his judgment, after stating that it might be a very nice question, and one very difficult to determine, whether the crank shaft was thoroughly sound before the towage services were rendered, expressed himself as follows:—"Upon the whole I think there is very strong reason to believe that the vessel strained considerably during the towage service, and because she had the other very heavy vessel in tow in a heavy seaway"; and again, "I do not think one can shut one's eyes to the fact that there was a very heavy strain brought upon the vessel; and, if it is not proved to demonstration that the injuries were done in consequence of the strain, there is very strong reason to believe that they well might have been."

It will be noted that the amount of the loss alleged by the plaintiffs to have been sustained by the owners of the *Missouri* considerably exceeds the amount awarded to them, and that, according to the view taken and acted upon by Mr. Justice Butt, the *Missouri* may have rendered the salvage services, not only without any remuneration to her owners, but at a very heavy loss to them. It may be that her owners may have formed an exaggerated estimate of the amount of loss which they have sustained, but they have been deprived of the opportunity of shewing that the loss sustained by them is as great as they allege.

Now, one cannot help feeling that such a result, in this and other cases, would have a strong tendency to discourage the rendering of salvage services, especially under circumstances similar to those which we are now considering, when from the very first it was evident that the towing of the *City of Chester* to Halifax must be one of a heavy character and involving considerable risk to the salving ship. These views were thoroughly present to the mind of Mr. Justice Butt, who in the course of his judgment alluded to the increasing indisposition to render assistance to vessels in distress, and to the necessity of making liberal awards when such services were rendered: an observation supported in its application to the present case by the fact that another steamer, the *Suevia*, had towed the *City of Chester* for twenty-four hours on the 6th and 7th of March, and had then abandoned her, on the alleged ground that her own coals were running short.

I pass on to consider the reasons assigned by the learned Judge for the rejection of the tendered evidence.

The question was not dealt with in the course of his judgment beyond a statement that he was not going to award any amount for the repairs to the crank shaft or for the repairs to the ship; but, in the course of the trial, when the rejected evidence, as to the detention of the ship for the purpose of her being repaired, was tendered, he expressed himself as follows:—"I do not think it has anything to do with the question, save as evidence of the risk run. If you have so much damage done that it costs you 20,000*l*. I could not have increased my award. It is all evidence of the risk you have run; you run that risk for better or worse. If you do it without injury at all you earn so much more—if not, you earn so much less."

The counsel for the plaintiffs thereupon submitted that it was the duty of the Court to see, if possible, that the salvors were not out of pocket; to which the learned Judge replied, "I do not agree with that at all; I differ entirely with you there. I think that it may very well be that a vessel rendering salvage services would get such an injury that they would be out of pocket." And when, upon the rejection of the tendered evidence, the counsel for the plaintiffs pressed for a reference to the Registrar and merchants, the Judge observed: "Salvage remuneration is the sort of compensation, or sort of price to pay, for the services rendered, and one of the elements in arriving at that is the risk run by the salvors and their property. Now, in order to appreciate the risk to property, it is very often material to see what did happen; and if you shew a collision between two vessels, or if you shew straining and damage to the crank shaft of the salving vessel, all that is evidence of the risk, and all that may be very properly taken into account in the award; but what I hold is this: that, taking the risk upon yourself, and having a greater or less amount awarded you in consequence of that risk, you are not entitled, if the risk had gone against you, to say: 'Now, then, we claim not only our award, but we claim the whole price of repairing the injury done, and the demurrage during the delay for such repairs.' I do not think that you are entitled to that, and, if you are not, I do not see how any of this is material beyond the fact that your crank-shaft was broken, and the body of your engine was loosened, and matters of that sort."

I have thought it right to set out at some length the grounds, as stated by himself, upon which Mr. Justice Butt declined to entertain the question of the amount of damage sustained by the *Missouri*, either by the reception of evidence adduced before himself, or by a reference to the Registrar and merchants.

I readily assent to the proposition enunciated by him, that, in determining the amount of salvage to be awarded in any particular case, one of the matters to be taken into consideration is the amount of risk run by the salving ship in rendering the salvage service, and that, in estimating the amount of risk so run, evidence of any injury actually sustained by the salving ship is admissible; but I am unable to adopt the view, apparently held by him, that the amount of the salvage award should in no respect depend upon the amount of loss occasioned to the owners of the salving ship by reason of the injury

sustained by their ship in rendering the service.

Mr. Justice Butt put a strong case; but it illustrated his views upon the subject when he said, "If you have so much damage done that it will cost you 20,000*l.* I cannot increase my award"; and it was evidently present to his mind that the principle upon which he was acting in the present case would, as I have already pointed out, probably leave the owners of the *Missouri* not only unrewarded for their salvage services, but heavy losers through having rendered them.

If I rightly appreciate the language used by the learned Judge, he considered himself bound, by rules recognised by his predecessors in the Court of Admiralty, to reject the tendered evidence; but he nevertheless, at the time when he rejected it, expressed himself to the effect that the question involved was of great importance, and one which in his time had never been satisfactorily argued, and that, though objections had been from time to time taken and rulings made, it had always been without argument; and, though the admission of the rejected evidence or a reference to the Registrar and merchants was strongly pressed by the counsel for the plaintiffs, and as strongly opposed on behalf of the defendants, it does not appear that there was any argument upon the question before Mr. Justice Butt. It has, however, been very ably discussed before us.

In the course of the arguments numerous cases were cited by the counsel for the plaintiffs in which the Court of Admiralty has decreed payment to the owners of salving ships for the losses sustained by them in consequence of injuries to their ships whilst rendering the salvage services. In some of such cases the Court itself received evidence as to the amount of such losses, and in others it referred it to the Registrar and merchants to ascertain and report to the Court. Amongst others, our attention was directed to the cases of *The Oscar* (3), *The Salacia* (4), and *The Jane* (5)—all decided by Sir Christopher Robinson—*The Saratoga* (6), and *The Mud Hopper* (7).

I deem it unnecessary to refer to these cases in detail, as, since the decision of Mr. Justice Butt on the 1st of May, 1883, in the case now under consideration, two other judgments have been delivered: the one by Sir James Hannen on the 21st of the same month, in the case of *The Sunniside* (2), and the other by the same learned Judge in the Privy Council, on the 30th of June following, in the case of *The De Bay* (1), in which similar questions arose to those with which we now have to deal.

The material facts in the case of *The Sunniside* (2) were as follows:—On the 7th of November, 1882, the *Sunniside* steamer broke down when she was about twelve miles east of Scarborough, bound for Shields; salvage services were rendered by several vessels, and amongst others by a steam trawler named the *Monarch*. In the action, which was a salvage action, evidence was tendered by the counsel for the *Monarch* as to the cost of repairing damages occasioned to her whilst rendering the salvage services, and of the loss of profits whilst so engaged; and this evidence was received by Sir James Hannen, though urged by the counsel for the *Sunniside* to reject it; and in the result Sir James Hannen awarded to the *Monarch* 200*l.* in respect of salvage pure and proper, and 100*l.* beyond that sum for loss of profits and repairs. As before mentioned, this award was made on the 21st of May, 1883, three weeks after the judgment of Mr. Justice Butt in the present case.

In the course of his judgment Sir James Hannen, after describing the extent to which he considered that the several vessels had rendered services, and stating that in his opinion the *Monarch* was the vessel which performed the real salvage service, expressed himself as follows:—"A question arose at the hearing yesterday as to the admissibility and effect of evidence of what a salving vessel might have earned if she had not been occupied in rendering the salvage service. I was asked to reject that evidence, but this I did not consider myself at liberty to do, because it appears to me it is admissible as an element to be considered in awarding the remuneration to be paid to a vessel which has rendered salvage services. I remain of the opinion which I expressed yesterday, after considering it further, that it is not to be taken in ordinary cases as a fixed figure

always to be allowed as in the nature of damage and then to be added to the amount awarded for the actual salvage service. I think the loss of earnings and the actual services must be considered under ordinary circumstances together. It is to be remembered that the reason why so high a rate of remuneration is given for salvage service is because of the sacrifices which the salving vessel makes; but to give, as it were, damages for the sacrifices made, and also a high rate of salvage remuneration, would be to give that remuneration twice over. As a rule, therefore, it appears to me that the amount for loss of trade and so on cannot be taken as an actual figure in calculating what the salvage reward is to be. The same remarks apply, though not with the same force, to the question of damage done. But there is a reason in this case why a distinction should be drawn, and I propose to do it for the purposes of this case only"; and he then proceeded to state why, in the case before him, he thought it right to assess the amount of salvage, pure and simple, apart from the amount which he awarded for cost of repairs and loss of profits.

The decision in the case of *The Sunniside* (2) appears to me to affirm the following propositions: 1. In a salvage action, evidence is admissible of the cost of repairing damage done to the salving vessel in consequence of rendering salvage service, and of the loss of earnings occasioned by any injury in such service. 2. Such cost and loss are elements for consideration in estimating the amount of the salvage reward. 3. Under ordinary circumstances the amounts of such costs and loss ought not to be taken as "fixed figures" or "moneys numbered," to be allowed in the nature of damage, added to the amount of the award for actual salvage service, but should be taken into consideration in arriving at the amount to be so awarded. 4. Under special circumstances, of which the case of *The Sunniside* (2) was itself an illustration, the amounts, when ascertained, of cost incurred for repairs and of loss of earnings may properly be taken as "fixed figures," and added to the award for actual salvage service.

With respect to the first of these propositions, it is to be observed that it goes no further than to affirm that the evidence therein mentioned is admissible; but it must be borne in mind that the only question raised was, whether it was admissible.

I pass on to consider the case of *The De Bay* (1), the material facts of which were as follows:—In the month of September, 1881, the *Mary Louisa*, a steamship of 1,287 registered tonnage, in ballast, and bound from Marseilles to a port in Sicily, fell in with the *De Bay*, a screw steamer, of 1,805 tons register, bound to Rangoon, with a general cargo; the *De Bay* was making signals of distress, having lost her propeller; the *Mary Louisa* towed the *De Bay* to Malta; the services, which lasted about sixty-two hours, were rendered under circumstances of great difficulty and some danger, and it was alleged by the owners of the *Mary Louisa* that their ship sustained considerable damage consequent on the services so rendered. A suit for salvage was brought by the *Mary Louisa* against the *De Bay* in the Vice-Admiralty Court of Malta, the value of the *De Bay* her cargo and freight being agreed at 67,000*l.*, and the Judge awarded the sum of 3,535*l.* for loss and damages, and 5,000*l.* for salvage services, making together 8,535*l.* From that judgment the owners of the *De Bay* appealed to the Privy Council, and, in support of their appeal, contended that in no case ought the items of loss or damage to the salvage vessel to be allowed as "moneys numbered," but that they should only be taken into account generally, when estimating the amount to be awarded for salvage remuneration; they also contended that some of the items of loss or damage ought not to have been taken into consideration at all.

The judgment delivered by Sir James Hannen contained passages in the following terms:—"Their Lordships are of opinion that it is always justifiable, and sometimes important when it can be done, to ascertain what damages and losses the salving vessel has sustained in rendering the salvage services. It is frequently difficult and expensive, and sometimes impossible, to ascertain with exactness the amount of such loss, and in such cases the amount of salvage must be assessed in a general manner upon so liberal a scale as to cover the losses and to afford also an adequate

reward for the services rendered. In the assessment of salvage regard must always be had to the question whether the property saved is of sufficient value to supply a fund for the due reward of the salvors, without depriving the owner of that benefit which it is the object of the salvage service to secure to him. If, as in the present case, the fund is ample, it is but just that the losses voluntarily incurred by the salvor should be transferred to the owner of the property saved, for whose advantage the sacrifice has been made, and in addition to this the salvor should receive a compensation for his exertion, and for the risk he runs of not receiving any compensation in the event of his services proving ineffectual; for if no more than a *restitutio in integrum* were awarded there would be no inducement to shipowners to allow their vessels to engage in salvage services." And again, "their Lordships are therefore of opinion that the learned Judge below has not adopted an erroneous principle in first estimating the amount of loss sustained by the *Mary Louisa* and then adding to it an amount for salvage services."

Their Lordships, however, having examined into the evidence, did not accept all the items of loss which had been taken into consideration by the Judge of the Vice-Admiralty Court, and they further considered, for the reasons expressed in the judgment, that he had awarded too large a sum for salvage remuneration, and they accordingly held that an aggregate of 6,000*l.* was sufficient.

The case of *The De Bay* (1) has, in my opinion, established the following proposition: that the cost of repairing injuries occasioned by rendering salvage service, and the loss of earnings arising from the detention of the ship whilst such repairs are being executed, ought to be ascertained with precision where practicable.

In some cases, which will readily suggest themselves, the actual cost of repairs and loss of earnings may be immaterial—as, for instance, if they clearly exceed the recognised limits of salvage award; in such a case it would be a waste of time and money to enter into evidence; in other cases it may be extremely difficult, if not impossible, to ascertain with exactness the amount of such cost and loss, and in such cases estimates must be adopted in making the general award.

During the arguments in the Privy Council in the case of *The De Bay* (1) it was urged, as it has been urged before us, that by allowing the costs of repairs and loss of earnings, and then a further sum for salvage, the salvors would receive payment of their losses twice over; but, as was pointed out in the judgment delivered by Sir James Hannen, such a result could only be brought about by the Court, after giving the amount of the alleged losses specially, taking them again into consideration when awarding the salvage remuneration an error into which it could not be presumed that any Judge would fall.

The cases of *The Martha* (9), *The Enchantress* (10), *The Ellora* (11), and *The Star of India* (12) were cited on behalf of the respondents, but they do not appear to me to displace the authority of the older cases cited on behalf of the appellants, and which were referred to, approved, and acted upon in the cases of *The Sunniside* (2) and *The De Bay* (1). I fully recognise the very large discretion which is vested in the Judge when dealing with salvage cases; but it is, in my opinion, a discretion the exercise of which may be reviewed, and, however unwilling a Court of Appeal may be to interfere with a decision at which the Judge, in the exercise of his discretion, has arrived, it is its plain duty to do so when in its opinion the discretion has been exercised in a manner which has failed to do complete justice between the litigant parties. The alterations which are occasionally made in the amount of salvage awards illustrate the general principle to which I am adverting, and a rejection of evidence which ought to have been received would appear to be a stronger case for its application.

Under these circumstances I cannot assent to the argument of Mr. Webster that the principles enunciated in the judgment in the case of *The De Bay* (1) are unsound; on the contrary, it appears to me not only that they are sound, having regard to authority, but that they are [illegible]

(10) Lush. 93; 30 Law J. Rep. Adm. 15.
(11) Lush. 550.
(12) 45 Law J. Rep. P., D. & A. 102; Law Rep. 1 P. D. 466.

both with justice and policy, when we bear in mind the purposes for which the jurisdiction of our Courts is exercised in salvage cases.

For these reasons, and bearing in mind that the property salved in the present case was of sufficient value to supply a fund for the due reward of the salvors, I think that the learned Judge by whom this action was tried ought either to have received the evidence which was rejected before making his award, or to have made his award for the salvage service proper, and to have referred it to the Registrar and merchants to estimate the additional allowance for costs of repairs and loss arising from detention.

LINDLEY, L.J.—This is an appeal by the owners of the steamship *Missouri* against a decision of Mr. Justice Butt, awarding a sum of 6,500*l.* for salvage services rendered by the *Missouri* to the steamship *City of Chester*. The value of the salved property was 179,000*l.*, and there were 111 passengers on board the *City of Chester*. The value of the salving property was 189,000*l.*, and the Court apportioned the 6,500*l.* awarded as follows:—4,500*l.* to the owners of the *Missouri*, and 2,000*l.* to the master and crew.

The sum of 4,500*l.* awarded to the owners of the salving ship is a very large sum; but, large as it is, her owners complain that it is not enough to cover the loss they have actually sustained by reason of the services their ship rendered to the *City of Chester*. They allege that the *Missouri* broke her crank shaft and suffered further injury, and that the cost of repairs alone amounted to between 2,000*l.* and 2,500*l.* They further allege that it took thirty days to make good these repairs, and, taking the demurrage rate of the *Missouri* to be 128*l.* 13*s.* a day, they estimate their loss occasioned by her detention for repairs at 3,900*l.*, making their whole actual loss from 5,900*l.* to 6,400*l.* By the statement of claim the plaintiffs demanded, if necessary, a reference to the Registrar and merchants to ascertain the amount of damage suffered by the *Missouri* in rendering the salvage services.

At the trial the plaintiffs tendered evidence in support of their above mentioned claims, but the learned Judge refused to receive it; and he refused to direct a reference to the Registrar and merchants to ascertain the amount of loss actually sustained by reason of the injuries done to the *Missouri* and of her detention for repair. The view taken by the learned Judge is thus expressed:—"The substantial question raised by the appeal is whether the learned Judge ought to have received evidence of the above-mentioned losses, and whether he ought, considering the nature of the salvage services and the great value of the property salved, to have awarded to the owners of the salving ship such a sum as would at least cover their losses out of pocket." I think he ought, and my reasons for so thinking are as follows:—Salvage is the compensation made to those by whose assistance a ship or its cargo has been saved from impending peril or recovered from actual loss. The claim to compensation for salvage services is enforceable by action in the Court of Admiralty. The persons in whose favour the claim will be recognised, and the circumstances under which compensation to them will be awarded, have been the subject of judicial decision, and the leading principles applicable to these matters may be taken as settled. If the claimants come within the recognised class of salvors, and the circumstances under which compensation is habitually awarded are proved, their claim is allowed. In such cases the claim is made and allowed, not as a matter of favour which can be granted or refused at the arbitrary discretion of the Court, but as a matter of right.

The Mercantile Law Amendment Act, 1854 (17 & 18 Vict. c. 104), s. 458, clearly recognises this right. It is true the Act in section 458 is confined to salvage in the United Kingdom, but by the law of this country the nature of the right does not depend upon whether the salvage services were rendered on the high seas or on British territorial waters.

The lien which salvors have is only consistent with the existence of a right to be remunerated for their services, and this lien exists wherever the services may have been rendered.

But although the salvors have a right to compensation for salvage services, the

amount to which they are entitled is not fixed more definitely than by saying it ought to be reasonable. What is reasonable in any case must depend upon all the circumstances of that case; and different minds will naturally sometimes differ in their views of what is reasonable. But here again some circumstances are always material for consideration, and these have been ascertained by experience, and the Court has for its guidance a long course of judicial decision to assist it in coming to a proper conclusion in each particular case.

The first matter for consideration is the nature of the service rendered, the danger from which the one ship has been saved, and the danger to which the other ship has been exposed. Under this head have to be considered the skill and courage of the salvors, and the risk of life and death as well to the saved as to their rescuers. A salvage service which hardly exceeds ordinary towage is naturally remunerated on a very different scale from an heroic rescue from imminent destruction.

The next matter for consideration is the value of the property saved. The primary object of saving a ship and her cargo from loss is to preserve them for their owners, and this object would be defeated if the remuneration awarded to the salvors were so large as to deprive the owners of the saved ship and cargo of all benefit from their preservation. This consideration at once limits the amount of the salvors' remuneration; for, however meritorious their services, salvors are never awarded such a sum as to make those services useless to those who have to pay for them. The value of the ship and cargo saved is therefore always one element, and a very important element, in considering the amount to be awarded to salvors. There is not, however, any definite rule either as to the proportion of value to be given to the salvors, or as to the proportion to be left for the owners of the property saved—see *The Salacia* (4); and it is obvious that whilst a small percentage on a very large value might be an ample remuneration in one case, a very large percentage on a small value might be a very inadequate remuneration in another case. The risk of getting little by reason of the comparatively small value of the property saved is one of those risks which salvors always run.

Another circumstance which has to be taken into consideration is the risk salvors always run of getting nothing at all by reason of the failure of their efforts to save. However strenuous those efforts, however heroic, still if unsuccessful they go unrewarded. They have not in the result benefited the owners of the ship or cargo, and there is nothing preserved out of which remuneration can be paid.

Another circumstance to be considered is the importance of so remunerating salvors as to make it worth their while to succour ships in distress. This consideration renders it necessary to be liberal not only to captains and crews who perform the salvage services, but also to the owners of vessels engaged in those services where such vessels have been injured or exposed to danger. The salving vessel is often herself exposed to imminent peril; the risk of loss or damage to her is often very great; and the damage actually done to her, and the loss actually sustained by her owner from delay in her voyage and otherwise, may be, and often is, very considerable. Hence one element in determining the amount to be awarded for salvage services is the value of the salving ship and cargo which have been exposed to risk; and the nature and extent of the risk are other elements for consideration. Where the salving vessel is, as in the present case, a large and valuable steamer, exposed to great risk, the claims of her owner deserve very favourable attention—see *per* Dr. Lushington in *The Spirit of the Age* (13). Unless, where the salving vessel is a valuable steamer, the remuneration awarded to her owner is sufficient to cover this risk, owners of such vessels will naturally discourage their employment in salvage services: a result which would be very disastrous, and which the Court should do what it can to prevent. In order to avoid such a consequence as this it is necessary that the amount of compensation awarded to the owner of the salving ship shall, whenever practicable, be sufficiently large to cover the risk of damage and loss which he ran, where for-

(13) Swanst. 286.

tunately none has been sustained; and where damage and loss have been in fact sustained, and its amount can be ascertained, it is necessary that the sum awarded shall, when possible, be large enough to cover such amount. This amount, however, ought not to be the measure of the remuneration, for the damage actually sustained may be very small, and there may have been serious risk of sustaining much greater damage; besides which there is always the risk of earning nothing by reason of the loss of the succoured vessel. The amount of loss actually sustained by the owner of the salving ship can therefore seldom, if ever, be the maximum limit of the remuneration to be awarded to him. Neither can such loss be always the minimum limit; it never can be so where the value of the ship and cargo saved is too small to admit of payment in full of the loss in question. And even where the value is sufficient, the salvage service may be so trifling as to render it unreasonable to throw the loss sustained by the salvors on the owners of the property saved. But where the salvage services have been dangerous to the salvors, and have occasioned them serious pecuniary loss, and have been highly valuable to the owners of the property saved, and where the value of the ship and cargo saved is ample not only to defray the loss sustained by the salvors in addition to a proper sum for the services of the master and crew of the salving ship, but also to leave a substantial surplus for the owner of the property saved, in such a case the sum to be awarded to the owner of the salving ship ought to be enough to cover her actual loss and whatever additional risk he ran. Of course care must be taken not to fall into the error of remunerating him twice over for the same risk; he must not be remunerated for the risk he ran of suffering the loss the amount of which is ascertained and taken into consideration as the loss sustained.

Another very important reason for ascertaining the amount of pecuniary loss sustained by the owner of the salving vessel is to enable the Court to make a proper apportionment of the total sum awarded for salvage services, for it is obvious that no part of that sum which is given to cover the risk run by the shipowner or damage to the ship ought to go to the master or crew.

Having thus examined the principles applicable to this subject, it is necessary to turn to the authorities and see how they stand.

In *The Oscar* (3) the value of the salved ship and cargo was 2,400*l.*; the sum of 220*l.* was awarded for salvage, and apportioned between five salving smacks; but in addition to this sum Sir Christopher Robinson directed a reference to the Registrar and merchants to ascertain the amount of loss and damage actually sustained by the different salvors.

Again, in *The Salacia* (4), the same learned Judge awarded 1,500*l.* for salvage services, and in addition 600*l.* to the owners of the salving ship for injury sustained by her, and a further sum of 1,000*l.* to them for the loss of a sealing voyage. This last sum was assessed by the Registrar and merchants, to whom the assessment of this loss was referred. The learned Judge remarked upon the report of the Registrar and merchants that "it relieves the Court from the task of forming conjectural estimates of such consequences as are attributed to the engagement of the vessel in this salvage service." In all judicial investigations it is desirable to substitute accuracy for conjecture when the expense of so doing is not too great.

In *The Jane* (5) the same learned Judge awarded 1,200*l.* in all. Of this sum 500*l.* was awarded to the Master and crew of the salving ship, and 700*l.* was given to her owners for demurrage, repairs, risks, and expenses. The value of the ship and cargo salved was 7,000*l.* The owners of the salving ship claimed 350*l.* for demurrage, repairs, and expenses, and there being no dispute as to these figures no reference to ascertain them was necessary, and they were accordingly adopted by the Court.

In *The Saratoga* (6) the value of the ship and cargo salved was 52,092*l.* The salving vessel was a steamer, and was crushed against the landing-stage at Liverpool, and was damaged. Dr. Lushington estimated the damage at 150*l.*, the loss of employment when under repair at 250*l.*, making together 400*l.*, and he awarded 600*l.* in all. There seems to

have been no discussion in this case as to the admissibility or non-admissibility of evidence as to the cost of repairing the damage sustained or as to the loss of employment, but it is plain from the judgment that Dr. Lushington fixed the salvage awarded at an amount sufficient to cover these losses as well as ordinary salvage services.

In *The Albert* (14), Dr. Lushington, in awarding 400*l.* to a cutter which was damaged in saving a ship and cargo worth 1,672*l.*, expressly said the 400*l.* included the damage to the cutter This remark again shews that the salvage awarded ought at all events to cover the amount of damage sustained by the salving vessel when the property saved is of sufficient value to enable this to be done. This case is reported with two others, *The Otto Herman* and *The Ella Constance*, and in the head-note it is stated " in all cases the value of the vessel salving is regarded, and to whatever remuneration is given must be added a sum to meet any damage she sustains." But I cannot find anything in the judgments in those cases which warrants so wide a proposition. It is evidently inaccurate where the damage done to the salving ship is very great compared with the value of the ship and cargo salved.

In *The Mud Hopper* (7), Sir R. Phillimore expressly decided, after argument, that the owner of the salving ship was entitled to be compensated for the damage to the ship and for her detention during repair, in addition to what was awarded for salvage services. In this case the principle being decided, the figures were agreed.

In *The Sunniside* (2) evidence was tendered of what the salving vessel—the *Monarch*—might have earned if she had not been occupied in rendering the salvage service, and also of the cost of repairing the damage done to her. This evidence was objected to on the ground that no fixed sum could be awarded for these matters, in addition to the sum given as a salvage reward, which covered these items. Sir James Hannen admitted the evidence as an element to be considered in awarding the remuneration to be paid to a vessel which has rendered salvage services, and he awarded the *Monarch* 200*l.* for salvage services pure and proper, and 100*l.* beyond that for loss of profit and repairs.

The last and most important case in which this question has been discussed, was the case of *The De Bay* (1), decided by the Privy Council. In that case the Judge of the Vice-Admiralty Court of Malta had awarded a salving ship 5,000*l.* for salvage services, and 3,500*l.* for demurrage and damages—that is, 8,500*l* in all. An appeal was brought on the ground that this sum was excessive, and the Privy Council reduced the amount to 6,000*l.* The Court thought that some of the items of loss were not satisfactorily proved, but the Court nevertheless would not disturb the judgment on these items, but the Judicial Committee, allowing them to stand, reduced the 5,000*l.* on the ground that the Court below, having allowed all damages and losses in full, had been too liberal in adding so large a sum as 5,000*l.* to them. In this case the Privy Council expressly decided that the Court below had done right in admitting evidence of the loss sustained by the salving vessel, and in ascertaining the amount of such loss, and in fixing the sum awarded high enough to cover such loss and a proper remuneration for the salvage services.

It is true that the decisions of the Privy Council are not theoretically binding on this Court; but in case of mercantile or admiralty law, where the same principles are professedly followed in the colonies and in this country, it is, to say the least, highly undesirable that there should be any conflict between the decisions of the Judicial Committee and those of the High Court or Courts of Appeal in this country. Even if, therefore, I doubted the correctness of the decision in the case of *The De Bay* (1), I should be disposed to follow it rather than depart from it, and so introduce a diversity of practice where there ought to be no difference in principle. But, in fact, the cases already referred to seem to me fully to warrant the decision in the case of *The De Bay* (1), and I do not regard it as introducing any new practice or principle. It must, however,

(14) 33 Law J. Rep. Adm. 191.

always be borne in mind that the Court was dealing with a case in which the value of the property saved was very large compared with the whole sum awarded to the salvors, and that there was no circumstance to prevent the Court from awarding enough to cover the whole loss sustained by them.

The conclusion to be drawn from these authorities is that where the property saved is ample in the sense already explained, and where there is no circumstance which the Court can see at once would prevent it from giving an amount of salvage sufficient to cover the loss sustained by the salvors, evidence has been received and ought to be received to shew the amount of loss actually sustained by the owners of the salving ship by reason of the salvage services, with a view to fix their remuneration at such a sum that will cover such loss and remunerate them for such further risk as they ought to be compensated for.

This view is corroborated by the form of the statement of claim given in Appendix C. s. 3, No. 6, to the Rules of Supreme Court, 1883. In that form will be found amongst the particulars of a salvor's claim— Damage done to the salving ship, so much. These forms were settled by persons of great experience; and although, of course, they are only illustrative, and not conclusive on any question of principle, the form in question indicates that where a salving ship has been injured, the cost of repairing her ought to be stated. If it ought to be stated, evidence in support of the statement ought not to be rejected except in cases where it is useless to admit it.

If it be said that the amount of salvage to be awarded is discretionary with the Judge, the answer is that his discretion is a judicial discretion, and not an arbitrary discretion, and that a Judge who excludes evidence on a matter which he ought to consider does not place himself in the position in which he ought to be before his discretion can be exercised.

I do not, however, wish to be understood as going further than the Court did in the case of *The De Bay* (1). When the Judge has ascertained the amount of loss sustained by the salvors, it still remains for him to decide what amount of salvage is reasonable, regard being had to all the circumstances of the case, the amount of loss sustained by the salvors being only one of them. But unless, owing to the comparatively small value of the property saved, the trifling nature of the salvage services, or some other circumstances, the Judge can foresee that it will be useless to enquire into the loss sustained by the salvors, he ought, in my opinion, to receive evidence of such loss.

In the present case the value of the salved property was ample, not only to defray any amount of remuneration which could be reasonably awarded to the salvors, but also to leave a very large surplus to the owners of the property salved. The salvage service was important, and there was no circumstance to justify the Court in coming to the conclusion that the evidence, if taken, would not affect the amount of salvage to be awarded. The learned Judge who tried the action awarded to the owners of the salving ship 4,500*l.*, which is a large sum; but as already stated he refused to allow evidence to be given either before himself or the Registrar of the loss actually sustained by those owners by reason of the damage done to their vessel, and of the delay in her voyage.

The learned Judge, however, had not the assistance of the decision of the Privy Council in the case of *The De Bay* (1), for that case was not decided until June, 1883, two months after the present case was heard by him. Had that decision been reported the learned Judge would no doubt have followed it.

For the reasons above stated I am of opinion that the learned Judge ought, under the circumstances of this case, either to have admitted the evidence which he rejected, and then to have decided what would be a proper sum to award the salvors, or to have fixed the remuneration for mere salvage and to have referred the amount of loss to the Registrar and merchants, and have added that amount to the former sum. Had he adopted either of these courses, and ascertained, as a fact, that the salvors' losses out of pocket amounted to between 5,000*l.* and 6,000*l.*, which is what they allege, I cannot think

that he would have considered 4,500*l.* sufficient for their remuneration.

Whether the Judge of the Admiralty Division of the High Court, in this or any other salvage action, will himself ascertain the amount of loss or refer it to the Registrar and merchants is entirely a matter for his discretion. But I cannot think it discretionary with him to admit or reject evidence of such loss where (as in this case) there is nothing to justify the rejection of the evidence as useless, and where there can be no difference of opinion as to the ample value of the property saved to admit of the application of the course followed in the case of *The De Bay* (1).

The appeal ought not, in my opinion, to be dismissed, but the order of the Court below ought to be varied, so far as it relates to the sum of 4,500*l.* awarded to the appellants. Unless, therefore, the appellants prefer to take the sum of 4,500*l.* awarded them, they are entitled to an enquiry in the terms stated by the Master of the Rolls in order to ascertain the amount of loss sustained by them, and to add the amount when ascertained to the sum awarded for the use of the ship and the risk of her earning nothing, and this sum we fix at 1,000*l.*

Order of Court below varied.

Solicitors—Pritchard & Sons, agents for Bateson & Co., Liverpool, for appellants; Gregory & Co., agents for Hill, Dickinson & Co., Liverpool, for respondents.

PROBATE. 1884. May 29, 30.

HELLIER *v.* HELLIER AND OTHERS.

Will—Revocation—Later Will not found—Memorandum at foot of earlier Will.

The testator duly executed a will in 1864, *by which he constituted his wife universal legatee and appointed her sole executrix. In* 1877 *he duly executed a second will, which was not forthcoming at the time of his death, and as to the contents of which the only evidence was a declaration by the testator at the time of executing it that he had altered his affairs, and that he had taken care of his wife, and that there would be something for one of his nephews. The earlier will was found after the testator's death, with a memorandum at the foot of it in the testator's handwriting to the effect that the will was "useless, a new will having been made in October,* 1877," *on account of his wife telling him that she was sorry she had ever seen him:*—Held, *that, in the absence of proof of a change of executrix, or of a revocation clause in the second will, the earlier will was not revoked.*

Semble, *that the memorandum at the foot of the earlier will was not admissible as evidence of an intention to revoke it.*

The plaintiff propounded the will of her husband, Charles Hellier, who died at Wonersh, Surrey, on the 15th of March, 1883, having on the 14th of April, 1864, duly executed a will whereby he constituted his wife universal legatee and appointed her sole executrix.

The defendants, who were the next-of-kin of the deceased and parties entitled in distribution, alleged in their statement of defence that the deceased had in the year 1877 executed a second will whereby he appointed a Mr. Elwin solo executor and revoked the earlier will, but that such later will could not now be found.

The plaintiff, in her reply, denied the execution of the later will and the revocation of the earlier will.

The action was tried before Butt, J., without a jury.

The defendants' evidence shewed that in October, 1877, the deceased, who was then staying with a Mr. and Mrs. Doughty, produced a will, which he executed in their presence, and which they attested at his request; and that he afterwards said to them, "I have made a will altering my affairs, and I have taken care of Ellen" (meaning his wife), "and there will be something for Robey" (meaning one of his nephews).

The deceased afterwards brought the will to Mr. Elwin, who read it at his request, and he then put it into an envelope, which he sealed, and asked him to take care of it. Mr. Elwin died shortly afterwards, and the sealed envelope was

handed back by his widow to the testator. The later will was never seen again by any person, and was not now forthcoming, and there was no further evidence as to its contents.

After the testator's death the earlier will was found, with the following memorandum written at the foot of it in the testator's handwriting—"This will is useless now, a new one having been made in October, 1877, upon my wife telling me she was sorry she had ever seen me or ever married me, which accounts for her strange conduct towards me and the behaviour of her niece to me, whom I have maintained for the last thirty years."

Bayford, for the plaintiff.

Middleton, for the defendants.

The following cases were referred to—*Hellyer* v. *Hellyer* (1), *Cutto* v. *Gilbert* (2), *Brown* v. *Brown* (3), *Lemage* v. *Goodban* (4), *Wood* v. *Wood* (5), and *Sugden* v. *Lord St. Leonards* (6).

BUTT, J.—The facts proved in this case, and the inferences to be drawn from them, do not create much difficulty, but the question for the decision of the Court is as to the legal consequences arising from those facts. A will was duly made by the testator in 1864, by which he left all his property to his wife, who now propounds the will, and made her sole executrix. It is further proved that in the autumn of 1877 the testator executed in due form another will, which will made in part a different disposition of his property. I do not think that there is evidence from which I ought to infer that there was any change of executrix, or any revocatory clause, in the second will, or any bequests wholly inconsistent with the first will.

These being the facts, what is the conclusion that is to follow? I am of opinion that, in the absence in the second will of any revocatory clause or of a change of executrix, the second will, which is lost, cannot, unless the dispositions of the first will are wholly altered, be held to have revoked the first; and, in my opinion, there has been no such alteration of the disposition of the property as to effect such a revocation. Such a conclusion seems to me consistent with the interpretation which was put upon the judgment of the Privy Council in *Cutto* v. *Gilbert* (2) by Lord Penzance in *Lemage* v. *Goodban* (4). In the course of his judgment he said—"The principle applicable is well expressed in Mr. Justice Williams's book on Executors. He says, 'The mere fact of making a subsequent testamentary paper does not work a total revocation of a prior one, unless the latter expressly or in effect revoke the former, or the two be incapable of standing together; though it be a maxim, as Swinburne says above, that no man can die with two testaments, yet any number of instruments, whatever be their relative date, or in whatever form they may be, so as they be all clearly testamentary, may be admitted to probate, as together containing the last will of the deceased; and if a subsequent testamentary paper of the testator be partly inconsistent with one of an earlier date, then such latter instrument will revoke the former as to those parts only where they are inconsistent.' This passage truly represents the result of the authorities." I take that to mean that, if the dispositions are only partly altered, there is no entire revocation of the preceding will. That being Lord Penzance's view, with which I entirely agree, of the result of *Cutto* v. *Gilbert* (2) and the other authorities, I hold that in this case the second will, with its contents so far as we know them, did not revoke the first.

As to the memorandum appended by the testator at the foot of the will of 1864, I think it doubtful whether it may be received in evidence to shew an intention to revoke that instrument; but it is not necessary to discuss that question, because, taking it most favourably for the defendants, it amounts to no more than this, that there was some, but not a total, alteration of the dispositions. I am therefore of opinion that the will of 1864 was

(1) 1 Lee, 472.
(2) 9 Moo. P.C. 131.
(3) 8 E. & B. 876; 27 Law J. Rep. Q.B. 173.
(4) 35 Law J. Rep. Prob. & M. 28; Law Rep. 1 P. & D. 57.
(5) 36 Law J. Rep. Prob. & M. 34; Law Rep. 1 P. & D. 309.
(6) 46 Law J. Rep. P., D. & A. 49; Law Rep. 1 P. D. 154.

not revoked by the will of 1877, and that I must pronounce for the former will as now propounded, the defendants to have their costs out of the estate.

Solicitors—Crouch, Spencer & Edwards, for plaintiff; W. Butcher, for defendants.

PROBATE. 1884. Aug. 5. } *In the goods of* ANNE GUNN.

Will—Married Woman—Power of Appointment over Real Property—Equitable Conversion—Probate Duty.

The Probate, Divorce, and Admiralty Division of the High Court is not bound by the practice of the Court of Probate before the passing of the Judicature Acts.

Freehold property, which is by the doctrine of equitable conversion to be considered as personalty, is chargeable with probate duty, and a will which disposes of such property under a power of appointment is entitled to probate.

Anne Gunn, of Hambledon, Hampshire, died on the 26th of November, 1879, leaving her husband, John Gunn, surviving her.

By a settlement, executed on the 17th of October, 1851, upon the marriage of the deceased with the said John Gunn, freehold property was conveyed to trustees, upon trust to sell the same, and, after the death of Anne Gunn and her husband, to stand possessed of the proceeds, in default of children, upon trust for such purposes as the said Anne Gunn should by will appoint. Power was given to postpone the sale, and it was provided that "notwithstanding any postponement of the sale of the said freehold premises, or any part thereof, the same premises should for the purposes of enjoyment and transmission be considered as converted in equity, but without prejudice to the right of the person or persons becoming absolutely entitled to the entire produce thereof to treat the same as unconverted or require a conveyance thereof."

On the 8th of January, 1862, the deceased executed a will by which she appointed the Rev. Robert Higgins and the Rev. Robert Hale as her executors, and exercised her power of appointment under the settlement in favour of her husband.

There were no children of the marriage, and the testatrix had no other separate property. John Gunn died on the 25th of August, 1883, and after his death the trustees of the settlement sold the property and paid the proceeds to the executors of Anne Gunn.

Probate and legacy duty were claimed by the Crown in respect of the proceeds of the sale, but the District Probate Registrar at Winchester had refused a grant of probate, on the ground that the will dealt only with real estate.

Bayford moved for a grant of probate of the will of Anne Gunn.—It must be admitted that the authorities on this subject are not wholly consistent with one another. In *In the goods of Barden* (1) Lord Penzance held that the appointment of an executor is not sufficient to give the Court jurisdiction to grant probate if the will disposes only of real property; and that the doctrine of equitable conversion is not recognised in such cases. *In the goods of Jordan* (2) is a decision to the opposite effect.

[THE PRESIDENT.—That was not the case of a will executed in pursuance of a power.]

In the goods of Barden (1) was followed in *In the goods of Bootle* (3).

[THE PRESIDENT.—In that case my decision turned on the words of the particular will.]

In *Brownrigg* v. *Pike* (4), which was decided since the passing of the Judicature Acts, a married woman, having a power of appointment over real property, ex-

(1) Law Rep. 1 P. & D. 235.
(2) 37 Law J. Rep. Prob. & M. 22; Law Rep. 1 P. & D. 555.
(3) 43 Law J. Rep. Prob. & M. 177; Law Rep. 3 P. & D. 179.
(4) 51 Law J. Rep. P., D. & A. 29; Law Rep. 7 P. D. 61.

In the goods of Gunn, Prob.

ecuted the power in favour of herself, and afterwards made a will and appointed an executor. It was held that she had died possessed of separate estate, and that her will was entitled to probate. In *The Attorney-General* v. *Brunning* (5) property had been dealt with in a will as realty, but had been converted into personalty before the death of the testator, and it was held that such property was chargeable with probate duty as personalty. So in *The Attorney-General* v. *Lomas* (6) it was held that where a will contains an absolute trust for conversion of real property, and the heir-at-law takes the undisposed-of interest by reason of the failure of the limitations of the proceeds of the sale, he is liable to pay legacy duty. *The Attorney-General* v. *Brunning* (5) was also followed in the recent case of *The Attorney-General* v. *Hubbuck* (7).

THE PRESIDENT (SIR JAMES HANNEN). —I am of opinion that the cases establish that probate duty is payable upon real property in cases where, by reason of the equitable doctrine, as it is commonly called, a conversion has taken place, in contemplation of law, into personalty; and I think it therefore follows that probate ought to be granted in such a case.

I have always recognised a distinction between a will made by a married woman under a power, and one made when disposing of property in her own right or as a *feme sole*; and I gave effect to that distinction in *Brownrigg* v. *Pike* (4). The will having been executed under a power, the power must be looked at in order to see in what character the property was held when it was disposed of by the testatrix; and if it has, by virtue of the power, been converted into personalty, she is in fact disposing of personalty. That appears to me to be the case here. The property was conveyed to trustees upon trust for sale, with a proviso that, notwithstanding any postponement of the sale, the property should, for the purposes of enjoyment and transmission, be considered as converted in equity. This provision will, therefore, stamp upon the property from the beginning the character of personalty, and accordingly she must deal with all the incidents of personal property. I am thus enabled to draw what appears to me to be a satisfactory distinction between *Brownrigg* v. *Pike* (4) and *In the goods of Barden* (1), where Lord Penzance altogether refused to recognise the doctrine of equitable conversion in the Court of Probate.

I should, of course, have felt myself bound to act upon any decision of Lord Penzance if I thought that such decision completely covered the case before me, but it appears to me that a very great change has been worked by the fusion of all the Courts into one. There is no difference between the law to be administered in this division and the law as administered elsewhere; but each Court must ascertain what the law is, whether legal or equitable; and therefore I think that it is open to me to establish a different practice to that which existed in the Probate Court.

I am of opinion that, where freehold property has had impressed upon it a changed character by reason of the doctrine of equitable conversion, it is to be treated as personalty, and that probate duty is payable; and it follows that in this case probate ought to be granted.

Solicitors—Cunliffe, Beaumont & Davenport, agents for Gunner & Renny, Portsmouth.

(5) 30 Law J. Rep. Exch. 379; 8 H.L. Cas. 243.

(6) 43 Law J. Rep. Exch. 32; Law Rep. 9 Exch. 29.

(7) 53 Law J. Rep. Q.B. 146; Law Rep. 13 Q.B. D. 275.

[IN THE COURT OF APPEAL.]

PROBATE. 1884. June 11. } PRIESTMAN *v.* THOMAS.*

Estoppel—Res Judicata—Matter incidentally arising—Jurisdiction—Rules of Court, 1883, *Order XXV. rule* 2.

In a probate action T. and G., defendants, propounded a will, which, upon a compromise based upon the representation of T. of its genuineness, was admitted to probate. The plaintiff in the probate action subsequently ascertained that the will so admitted to probate was a forgery, and he commenced an action in the Chancery Division against T. and G., and also against the next-of-kin of the testator, to set aside the compromise on the ground that it had been obtained by fraud, and obtained a verdict of a jury in the Queen's Bench Division, to which the action had been transferred, that the compromise so far as it related to T. had been obtained by his fraud, that the will was a forgery, that T. was a party or privy to it, and judgment was given to set aside the compromise.

The plaintiff subsequently instituted an action in the Probate, Divorce, and Admiralty Division against T. and G. for revocation of the probate of the will propounded by them:—

Held (*affirming the judgment of* SIR J. HANNEN), *that the question whether the will was a forgery was the issue in the action in the Chancery Division, and was not an incidental or subsidiary question; that such question being within the jurisdiction of the Chancery Division, the case fell within the first part of* The Duchess of Kingston's Case (20 How. St. Tr. 355; 2 Sm. L.C. 803), *and that the verdict and judgment in the action in the Chancery Division were conclusive in the present probate action, and that the defendants T. and G. were estopped in that action from denying that the will propounded by them was a forgery.*

This was an appeal by the defendants Thomas and Gunnell from a decision of the President of the Probate, Divorce, and Admiralty Division (Sir J. Hannen) holding that they were estopped from denying that a certain will, which had been propounded by them for probate, was a forgery. The present action was instituted in that Division to revoke the probate of a will propounded by the defendants, and which had in pursuance of a compromise been proved in solemn form. The facts of the case are stated fully in the report in the Court below, *ante*, p. 58.

The action brought by the plaintiff Priestman in the Chancery Division to set aside the compromise had been brought against the two above-named appellants, and he had joined as defendant the next-of-kin of the testator, Whalley.

Anderson, for the appellants, renewed the arguments and cited the cases urged and cited in the Court below, and, in addition, cited the case of *The Queen* v. *Hutchings* (1).

C. Russell, Q.C., and *Middleton*, for the plaintiff, were not called upon.

BAGGALLAY, L.J.—This is an appeal from the decision of the President of the Probate, Divorce, and Admiralty Division under circumstances which are somewhat peculiar. A will having been put forward for the purpose of probate, allegations were made that it had been obtained by undue pressure or influence upon the testator, and an action was brought by the present plaintiff for the purpose of proving this will in solemn form. That action having proceeded to a certain extent, a compromise was come to, to which all the parties interested in the question were parties. After the compromise had been come to, the will was admitted to probate. Subsequently it was discovered by the present plaintiff that that will had not merely been obtained by undue influence, but was actually a forgery, and an action was commenced in the Chancery Division to set aside the compromise, which had been obtained, as alleged, by fraudulent misrepresentation. That action was transferred to the Queen's Bench Division for the purpose of being tried by a jury, and was heard by Mr. Justice Manisty, and the verdict of the jury was taken on several points. The jury found

* *Coram* Baggallay, L.J., Cotton, L.J., and Lindley, L.J.

(1) 50 Law J. Rep. M.C. 35; Law Rep. 6 Q.B. D. 300.

—first, that the compromise, so far as related to the defendant Thomas, had been procured by his fraud; secondly, that the will of the 21st of March, 1881, was a forgery; and, thirdly, that the defendant Thomas was a party or privy to that forgery. A few days after the finding of the jury—namely, on the 4th of December, 1883—judgment was delivered by the Judge, which recited the findings of the jury, and declared that the probate of the will of March, 1881, was to be revoked, so far as regards the interest of the defendant Thomas. No application has been made for a new trial to set aside the verdict so found, although a further application was made, but without success, in the Probate, Divorce, and Admiralty Division, for a new trial of the original probate action, to set aside the former probate, and to have a new will, alleged to have been made in April, 1881, proved.

In that state of circumstances the present action is brought; and the statement of claim sets forth the facts I have mentioned, and that Thomas and Gunnell were estopped from denying that the will of March, 1881, was a forgery and that Thomas was party or privy to it, and asks a declaration to that effect, and that the judgment and verdict pronouncing for the will of the 21st of March were obtained by fraud, that that verdict and judgment be set aside, that the will of the 21st of March, 1881, be set aside, and that probate be revoked.

The question now before the Court was raised under Order XXV. rule 2, providing a new mode of proceeding in lieu of demurrer, and the Court is asked, under that rule, to deal with a particular question of law. It is not disputed but that the regular proceedings have been adopted, and the only question before Sir J. Hannen was whether the two defendants were in fact estopped from denying that the will was a forgery. That Judge was of opinion that they were so estopped.

Mr. Anderson has addressed to us a very able argument of a similar effect to that used by him in the Court below, which Sir J. Hannen sums up thus:—"For the defendants Thomas and Gunnell it was argued that the action tried before Mr. Justice Manisty was brought for a different purpose to that for which this action is brought, and that the finding that the will was a forgery was merely collateral to the issue there raised, and that consequently no estoppel arises." The question here is, was this merely subsidiary, and authorities have been referred to, to shew that it was.

It may be admitted that the Chancery Division had not power to set aside the probate of the will; but it had jurisdiction to decide whether there had been a forgery, on which question the validity of the compromise depended. The fact of the forgery having been committed, and having been committed by Thomas, were necessary facts to enable the Court to decide the question whether the compromise should be allowed to stand.

The President further said in his judgment:—"I am, however, of opinion that the conclusive effect of the verdict and judgment in that action is not confined to the bare issue whether the agreement of compromise was obtained by fraud, but extends to that which it was necessary in that action to decide, and which was in fact decided as the basis of the decision." The learned Judge then referred to the case of *Flitters* v. *Allfrey* (2), a case in which a landlord had evicted his tenant. If I caught Mr. Anderson's argument aright, he said that in both the actions there, that in the County Court and that in the Court of Common Pleas, the matter at issue was such as could be properly dealt with in either of those Courts, but that in this case the present action is not an action that could be properly brought in the Chancery Division.

I do not mean to say that in no case could that argument succeed, but when all parties interested in the question whether the probate of the will could be revoked or not were parties to the action in the Chancery Division, it appears to me to be a case in which we must hold that the verdict and judgment in the former action are conclusive for the purposes of the present action, and cannot be contested again by the defendants. The judgment of the learned President must be upheld.

(2) 44 Law J. Rep. C.P. 73; Law Rep. 10 C.P. 29.

Priestman v. *Thomas* (*App.*), *Prob.*

COTTON, L.J.—I am of the same opinion. The question for consideration is whether the appellants are estopped from denying that a document said to be a will was a forgery by reason of the judgment in the action in the Chancery Division. I think they are. I do not agree with Mr. Anderson that the question of a forgery was a merely incidental or collateral question in the Chancery action. It was the chief question which had to be decided, with the additional question whether the defendant Thomas was not a party or privy to it.

The allegation of the plaintiff in the Chancery action was, that that which was alleged to be a will, and for which probate had been obtained upon a compromise, was in fact a forgery, and that the compromise was obtained by fraud, and to that forgery the defendant Thomas was a party. The Court decided both questions, and the verdict was given on both; and the Court gave consequential relief, and set aside the compromise which the present defendants Thomas and Gunnell were seeking to support. But it is said that the action now before us is for a different purpose, and is one not within the jurisdiction of the Chancery Division. But, in my opinion, when the very point we have here—namely, the forgery of the will—on which the Court granted relief, and one which was within its jurisdiction, was decided between the same parties as are parties to this action, the present defendants ought not again to be allowed to litigate the question which was decided as between them and the present plaintiff in the other action, when all the parties interested in supporting the will were parties to that action.

It would, in my opinion, be wrong to allow parties to again litigate the question when all the parties interested in supporting the document were before the Court so that they might be (conclusively) bound by the decision of the question in that action.

If the Chancery Division had no jurisdiction to set aside the will, it had jurisdiction to decide the questions raised by the action, whether the will was a forgery, and whether Thomas was a party or privy to that forgery, which are the only circumstances we need refer to; they cannot be called incidental questions, they were the questions to be decided.

The Queen v. *Hutchings* (1) really explains what in my view is meant by a matter which "incidentally arises." The Justices in that case had refused to make an order upon the defendant directing him to pay a certain quota of expenses incurred in sewering and channelling a street. Their decision was based on the ground that the street was a public highway. That was a matter which was incidentally before them in this sense, that they were not deciding in the presence of all parties interested in contesting the question that this was a public highway, so as to be a binding decision for future time; and although that point could be decided in the presence of all parties interested in a proper proceeding, yet as between the parties then before them they could only decide the point incidentally.

Lord Selborne says:—"The Justices before whom the complaint of the urban authority came on the 7th of May, 1874, had no jurisdiction to adjudicate directly or immediately between these parties (or between any parties whatever) on the question whether Mill Street was or was not a highway repairable by the inhabitants of Bradford at large. That was, at the most, a matter 'incidentally cognisable' by them. No conclusion which they might form upon it could establish (in the one case) or disprove (in the other) any such liability as against or in favour of the inhabitants. Their only jurisdiction was to make or refuse the order for payment of a certain sum of money then claimed as the defendant's statutable quota of certain expenses at that time incurred by the urban authority." That is what is meant by a matter incidentally cognisable. In my opinion, the decision of Sir J. Hannen is right.

LINDLEY, L.J.—I am of the same opinion. The principle of law which arises in this case is clear, as explained in *The Duchess of Kingston's Case* (3) and *Barrs* v. *Jackson* (4). The difficulty lies in applying the principle, and we must look closely into

(3) 20 How. St. Tr. 355; 2 Sm. L.C. 803.
(4) 1 Phill. 582.

the facts. The action in the Chancery Division was for the purpose of setting aside the compromise, and was brought by Priestman against Thomas and his co-executor and the next-of-kin of the alleged testator. The relief sought was to have the compromise of a former action set aside. Whether that relief would be granted or not depended upon the single question whether the alleged will was a forgery or not. That being the main issue in the action, whether the will was a forgery, it cannot be said to be an incidental question; it was the direct question, and it appears to me that this case falls within the first part of *The Duchess of Kingston's Case* (3). It is clear that it was directly *the* question, because the Court, after deciding it, refused to consider a question which was put subsequently, whether the probate should be revoked. It has been argued that the question is incidental, inasmuch as the Chancery Division could not entertain an action to revoke probate. That may be true; but the question whether a will was a forgery was within its jurisdiction, and the Chancery Division had that question before it, and, for the purpose of affording the relief sought, that case had to be decided. That issue was tried, and the relief sought has been obtained upon it. That issue, forgery or no forgery, was the direct issue, with the additional issue as to the privity of Thomas.

In my opinion the view of Sir J. Hannen was right. The appeal must be dismissed.

Solicitors—Bell, Steward & Steward, agents for Lloyd & Son, Leominster, for appellants; Torr, Janeways, Gribble & Oddie, agents for Rayner & Turner, Manchester, for plaintiff.

[IN THE COURT OF APPEAL.]

DIVORCE. 1884. May 30. } PONSONBY *v.* PONSONBY.*

Settlement—Husband and Wife—Dissolution of Marriage—Capital and Income—22 & 23 *Vict. c.* 61. *s.* 5; 41 *Vict. c.* 19. *s.* 3.

The Court has full power under section 5 *of* 22 & 23 *Vict. c.* 61, *if, in the exercise of its discretion, it thinks it expedient to do so, to vary a settlement by giving the whole or part, not only of the income, but of the capital of the trust fund, to one party or the other.*

This was an appeal by the petitioner, who had obtained a decree for dissolution of her marriage on the ground of her husband's cruelty and adultery, from a decision of Butt, J. The case is reported below, *ante*, p. 29.

Searle, for the appellant.—The variation made by the judgment below is not sufficiently in my favour. There are no children of the marriage; and now, by the Act of 41 Vict. c. 19. s. 2, the power of variation of settlements given by 22 & 23 Vict. c. 61. s. 5 is exercisable by the Court, notwithstanding that there are no children. The Court has full power under section 5 of the latter Act to hand over the capital as well as the income, although there is no authority on the point; and it is submitted that under the circumstances of this case the Court ought to make such an order now, or that at least the income of the whole trust fund should be given to the petitioner.

Middleton referred, on the construction of the Acts, to *Wigney* v. *Wigney* (1), as shewing that cases like the present were cases of judicial discretion, and submitted that that discretion had been rightly exercised.

BAGGALLAY, L.J.—I am of opinion that the Court has full power, if it thinks it expedient, to give either the whole or part

* *Coram* Baggallay, L.J., Cotton, L.J., and Lindley, L.J.

(1) 51 Law J. Rep. P., D. & A. 60; Law Rep. 7 P. D. 177.

of the capital of the settled property; but in making any such provision the Court must have regard to the benefit of the person for whom the variation of the settlement is to be made.

In this case I am not satisfied that it would be for the benefit of the lady to give her any portion of the capital.

The next question is whether the amount of income, as given to her by Mr. Justice Butt, is sufficient. Mr. Searle asks for the income of the whole trust fund. The only part of the trust fund at present available is the sum of 300*l.*, and that will not be increased to the sum of 2,000*l.* settled until the death of the respondent's father. I will not say what I might have thought it right to give had the case been before me in the first instance; but this case has gone before the Judge of the Probate Division, who thought he was doing right in giving the income of the trust fund so long as it does not exceed 1000*l.* I asked Mr. Searle if he had any authority where the income of the whole trust fund was given to the wife when the husband had committed adultery, and he was not able to give me any. No doubt there are cases where the whole income has been given where the property settled is the lady's.

Under the circumstances of this case I do not think that we have any right to dissent from Mr. Justice Butt; but at the same time I desire clearly to express my opinion that the Court has the power, when it sees fit, of applying not only the income but also either the whole or a part of the capital of the settled fund.

COTTON, L.J.—Upon the question of the power of the Court, I think that under section 5 of 22 & 23 Vict. c. 61 the Court has undoubted power to deal with the capital of the settled property if it thinks fit. The property settled in the meaning of that section is not only income—the capital is also settled.

The Court has power to deal with the capital when it sees, in the proper exercise of its discretion, that it will be for the benefit of the person, whether wife or husband, that the whole or part of the capital should be applied—for example, in case of some emergency happening which might render the application of part of the capital very advisable.

But here, as regards the payment of this sum of 300*l.* to the petitioner, although we might desire to make some more adequate provision for the appellant, I do not think it would be for her benefit to give her the whole sum, which would soon be gone. There is no special emergency on which the application of the whole settled sum would be advantageous.

This is not a case in which we should interfere with the discretion of the Judge upon the question of the amount of income. If he had given the income of the whole I should not have differed from him.

LINDLEY, L.J.—I quite agree.

Solicitors—Prideaux & Sons, agents for Richard Andrews, Modbury, Devon, for petitioner; Guscotte, Wadham & Daw, for respondent.

DIVORCE.
1884.
June 23.
July 1.
August 9.

FARMER *v.* FARMER.

Desertion—Residence apart—Consent of Wife obtained by Fraud—Occasional Marital Intercourse.

A husband ceased, in 1880, *to cohabit with his wife upon the false pretence that his absence was necessitated by business engagements, but he supplied her with money, and occasional intercourse took place between them which resulted in the birth of a child. In* 1884, *the wife discovered that her husband had been for several years living with another woman, and she thereupon instituted a suit for dissolution of marriage on the ground of adultery and desertion*:—Held, *that the conduct of the husband did not amount to desertion.*

This was a wife's suit for a dissolution of marriage on the ground of the respondent's adultery and desertion, and was tried before the President of the Division without a jury.

The respondent did not appear.

The parties were married in 1873, and cohabited till 1880, when they ceased to live together; the respondent, who was a newspaper reporter and sub-editor, alleging that his avocations prevented him from being constantly with the petitioner. He, however, continued to supply his wife with money, and they met occasionally, and in February, 1884, she gave birth to a child, of which the respondent was the father. There were two other children of the marriage.

In January, 1884, the petitioner discovered that her husband had been for several years living with another woman, and thereupon she instituted the present suit.

The respondent's adultery was proved to the satisfaction of the Court.

Middleton, for the petitioner.—There has been desertion for two years without reasonable cause, since the wife's acquiescence in her husband's absence was obtained by fraud. In *Williams* v. *Williams* (1) Lord Penzance observed that desertion is not easy to define, but that the expression "seems pointed at a breaking off, more or less complete, of the intercourse which previously existed." In *Yeatman* v. *Yeatman* (2) Lord Penzance held that a permanent withdrawal of cohabitation amounts to desertion, although the husband may continue to support the wife; and in *Crabb* v. *Crabb* (3) he observed that a man who obtained his wife's consent to a separation by means of fraud is guilty of desertion.

Cur. adv. vult.

THE PRESIDENT (Sir JAMES HANNEN) (on August 9).—In this case a question arose as to what is meant by desertion. The husband provided a house for his wife, which was changed from time to time, in various suburbs of London, and, having alleged that his business was such that he could not permanently reside with her, he visited her from time to time; and the result of those visits was, quite recently, the birth of a child. The wife discovered about the same time that her husband's excuses were not well-founded, and that he might have spent more of his time at home than he actually did, but that he preferred to spend it in the company of some other woman, whom he introduced to various friends as his wife. The contention was that the husband's conduct amounted to desertion. There were other circumstances arising out of the correspondence between the husband and wife which are very disgraceful to the former, and which, if I could allow my mind to be prejudiced, would strongly influence me against him; but, since he continued to visit his wife, and his visits resulted in her giving birth to a child, I am of opinion that I should be straining the law if I arrived at the conclusion that he deserted her. I have on other occasions pointed out that, if a husband is living with another woman, the wife is justified in saying, "I shall not return to you, nor shall I allow you to have access to me while you are living in open adultery with another woman"; and it may be that in this case that which amounts to desertion has commenced, and that when the necessary time has elapsed the wife may claim relief on the ground of desertion as well as of adultery. At present, however, I must hold that the desertion has not been established; and it will be for the petitioner to consider whether she will take a decree for judicial separation, and, if the facts which I have suggested warrant it, file a fresh petition when the two years have elapsed.

Solicitors—Stevens & Co., for petitioner; F. A. Rudall, for respondent.

(1) 3 Sw. & Tr. 547; 33 Law J. Rep. P., M. & A. 172.

(2) 37 Law J. Rep. Prob. & M. 37; Law Rep. 1 P. & D. 489.

(3) 37 Law J. Rep. Prob. & M. 42; Law Rep. 1 P. & D. 601.

[IN THE COURT OF APPEAL.]

ADMIRALTY. 1884. June 19. } THE JOHN MCINTYRE.*

Collision — Fog — Risk of Collision — Approaching Ships — Regulations for Preventing Collisions at Sea — Rule of Conduct — Article 18.

Where in a dense fog those in charge of a steamship hear a whistle or fog-horn on either bow, which when repeated shews that the other vessel is approaching and is in the neighbourhood of their vessel, it becomes necessary, in order to obey article 18, *for them to stop and reverse their engines.*

Appeal by the defendants from a judgment of Butt, J., in an action to recover damages for injuries sustained by the steamship *Monica* in a collision with the *John McIntyre*, of which the defendants were the owners.

It appeared that the ships were in the North Sea, where there was a dense fog. Butt, J., after hearing the evidence as to the speed of the *John McIntyre*, held both vessels to blame; and he also found that the officer in charge of the *John McIntyre* did not stop and reverse until it was too late to avoid a collision, it appearing that he had heard a whistle on her port bow when he slackened speed, that he also heard the whistle repeated again two or three times a little later when the *Monica* must have been approaching his vessel, and that he did not even then stop and reverse.

By article 18 of the Regulations for Preventing Collisions at Sea it is provided that "every steamship when approaching another ship so as to involve risk of collision shall slacken her speed, or stop and reverse if necessary."

The Solicitor-General (Sir F. Herschell, Q.C.), and *Webster, Q.C.* (with them *Steavenson*), for the appellants, contended that there was no rule that a ship in a fog was bound to stop and reverse her engines when a whistle is heard, and that she may proceed, provided she does so with caution, if it would appear from the sound of the whistle that the other ship is keeping a course which will not involve risk of collision.

Myburgh, Q.C., and *Phillimore*, for the respondents, the owners of the *Monica*, were not called on.

BRETT, M.R.—The question here turns upon the application of article 18 of the Regulations for Preventing Collisions at Sea to the case of a vessel which was being navigated in a dense fog. The officer in charge of a vessel is bound to obey article 18 where the circumstances are such that an officer of ordinary skill and care can come to no other conclusion but that, if the ships continue to approach each other, there must be risk of collision. That was the rule as to the application of article 18 which we laid down in the case of *The Beryl* (1). It is clear that the circumstances here were such that the officer broke the rule. The vessels were approaching each other in a dense fog; the officer in charge of the *John McIntyre* heard the whistle of the *Monica*; but although he could not tell exactly where that vessel was, still he knew that she was in such a position with regard to his own vessel that he could not consider his vessel to be in an absolutely safe position; he was not, however, bound at once to stop and reverse when he heard the first whistle. But the inference to be drawn from the evidence that he heard another and another whistle, is that he ought to have come to the conclusion that the *Monica* was approaching nearer to his bow. Ought the officer, therefore, under the circumstances, to have come to the conclusion that if he did not stop and reverse there would be, not a collision, but risk of collision? I do not hesitate to lay down as a general rule of conduct that it is necessary under article 18 to stop and reverse under circumstances similar to those which have happened here. I do not say that those on board a vessel are bound to stop and reverse every time a whistle or fog-horn is heard in a fog; but where a whistle or fog-horn is heard on either bow, so that it would appear that another vessel is approaching nearer to or is in the neighbourhood of either bow, then it would

* *Coram* Brett, M.R., Bowen, L.J., and Fry, L.J.

(1) *Ante*, p. 75; Law Rep. 9 P. D. 137.

be necessary not merely to slacken speed, but at once to stop and reverse, because there would be risk of collision. We do not say that the vessel must have sternway upon her, but that she must stop and reverse her engines, so as, if necessary, to be brought to a standstill in the water. The officer in charge of the *John McIntyre* has in this case broken the rule of conduct which seems to me to be the result of the regulations. The judgment of Mr. Justice Butt was therefore correct, and the appeal must be dismissed.

BOWEN, L.J.—I am of the same opinion. Where two vessels approach one another so as to involve risk of collision, they are bound to slacken speed, and, if necessary so to do in order to avoid risk of collision, are bound to stop and reverse. It cannot be said as an absolute rule that a vessel in a fog is bound to stop and reverse when the whistle or fog-horn of another vessel is heard; but in this case it seems to me that there was nothing to cause the officer in charge of the *John McIntyre* to come to the conclusion that it was safe to go on; it therefore became necessary for him to stop and reverse when he heard the whistle; but as he did not do so until later, the *John McIntyre* must be held to blame.

FRY, L.J., concurred.

Appeal dismissed.

Solicitors—Gellatly, Son & Warton, for appellants; Botterell & Roche, for respondents.

DIVORCE. 1884. July 4, 8.

COLLINS *v.* COLLINS.

Divorce — Decree Nisi — Discretion — Adultery of Petitioner—Conviction of Respondent for Rape.

A husband obtained a decree nisi for a dissolution of marriage, on the ground of his wife's adultery; but, upon the intervention of the Queen's Proctor, the decree nisi was rescinded, on the ground of the adultery and cruelty of the petitioner. The parties afterwards resumed cohabitation, and the husband committed fresh acts of cruelty. He was afterwards sentenced to ten years' penal servitude for a rape upon a girl under twelve years of age. The Court, in the exercise of its discretion, pronounced a decree nisi for dissolution of the marriage on the wife's petition, notwithstanding her previous adultery.

This was a wife's petition for a dissolution of marriage, on the ground of the respondent's cruelty, adultery, and rape.

The parties were married in 1876, and in July, 1880, the present respondent obtained a decree *nisi* for dissolution of marriage on account of his wife's adultery with William John Smith. The Queen's Proctor afterwards intervened, charging the present respondent with adultery and cruelty, and the decree *nisi* was rescinded.

The parties lived separate from February, 1880, till March, 1882, when they resumed cohabitation; but they again separated a few months later.

The present respondent again committed adultery during the year 1882; and in July, 1883, he was convicted and sentenced to ten years' penal servitude for a rape on a girl under twelve years of age, whereupon the present suit was brought.

The case was tried before Butt, J., without a jury, and the facts are more fully stated in the judgment.

Bayford, for the petitioner.

Pritchard, for the respondent.

The following cases were referred to:—*Conradi* v. *Conradi* (1) and *Morgan* v. *Morgan and Porter* (2).

Cur. adv. vult.

BUTT, J. (on July 8). — This is a suit by a wife for a dissolution of marriage under the following circumstances:—

The parties were married in 1876, and the husband took to drinking almost immediately after marriage. There were continuous acts of cruelty on his part from the date of the marriage, or very soon

(1) 37 Law J. Rep. Prob. & M. 55; Law Rep. 1 P. & D. 514.

(2) 38 Law J. Rep. Prob. & M. 41 Law Rep. 1 P. & D. 647.

afterwards, down to the month of February, 1880, when the petitioner left her husband and went to her mother. In March, 1880, the husband filed a petition, charging his wife with adultery with William John Smith. That charge was proved at the hearing, and a decree *nisi* dissolving the marriage was pronounced on the 29th of July, 1880; but the Queen's Proctor afterwards intervened, charging the husband with gross and notorious immorality, and his petition was consequently dismissed. In March, 1882, the husband and wife met by accident, and the former persuaded the latter to resume cohabitation; but he soon afterwards resumed his ill-treatment of her, and therefore she again left him and returned to her mother's house. That cohabitation was of course a condonation of the previous adultery; but in September, 1882, the present respondent was living in adultery; and on the 30th of July, 1883, he was convicted at the Central Criminal Court and was sentenced to ten years' penal servitude for a rape upon a child under twelve years of age. It is under these circumstances that the petitioner now prays for a divorce. To that she certainly would be entitled but for the adultery proved against her in the former suit; and the question is, whether I ought to allow that adultery to defeat the present petition. The Court has a discretionary power to give, or to refuse to give, that effect to the petitioner's former misconduct; and I find that there are cases where relief has been granted, notwithstanding misconduct of the kind in question.

Having regard to all the circumstances of the present case, and to the position in which the husband is placed by reason of the sentence lately passed upon him—a sentence which deprives him of the power of fulfilling any of the conjugal obligations—not forgetting, too, that rape is treated, for the purposes of the Divorce Act, as a graver conjugal misdemeanour than ordinary adultery, I have no hesitation as to the course which I ought to take; and, acting in the exercise of my discretion, I pronounce a decree *nisi*, with costs.

Solicitors—Stacpoole & Son, agents for E. G. Pickering, for petitioner; E. Flux & Leadbitter, agents for P. de E. Collin, Maryport, for respondent.

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—— *intestacy: bastard dying unmarried in Cornwall: grant to solicitor of duchy of Cornwall*]—Where a person resident in the county of Cornwall died a bachelor, bastard and intestate, the Court made a grant of letters of administration of his estate and effects to the solicitor for the affairs of the duchy of Cornwall, for the use of His Royal Highness the Prince of Wales, but required the warrant to be amended, so as to set forth the grounds for the application. *In the goods of Edward Griffith*, 30

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A, a member of the Russian Imperial family, died in Russia, having executed a will by which he appointed B, his son, as his executor. After A's death a meeting of the members of his family was held, and an arrangement for the disposition of his property in accordance with the terms of his will was agreed to, and was embodied in a document termed an "Acte Définitif," which was subsequently confirmed by the Emperor of Russia; and by the terms of the "Acte Définitif" B was constituted the sole and entire owner of certain shares held by the deceased in a railway company having its offices in England. The Court, upon a certificate from the Russian ambassador in England, with the seal of the Russian embassy, reciting that the law of Russia is as stated above, and that, under the "Acte Définitif," B was the sole and entire owner of the railway shares, made a grant to the attorney of B of letters of administration with the "Acte Définitif" annexed, limited to the property of the deceased in England. Ibid.

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—— *will annexed: universal legatee: power of appointment: real estate: conversion*]—A married woman, having under the will of A a power of appointment by will over real estate, executed a will whereby she appointed all her real estate in favour of her husband absolutely, but she named no executor. She died without issue, and she left no separate property other than that which was the subject of the power. After the date of the will the husband and wife had presented a petition to the Court of Chancery under the Settled Estates Acts for the sale of the real property passing under the will of A. The property was sold, and, by order of the Court, the proceeds of the sale were invested in Consols in the names of the husband and of his co-trustee under the will of A:—*Held*, that the proceeds of the sale could not be treated as personal estate, and that the husband was not entitled to a grant of administration with the will annexed, as universal legatee of his wife. *In the goods of Lloyd*, 48

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The validity of a bottomry bond having been established, the question whether the items are excessive is to be decided by the Registrar and Merchants. Ibid.

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—— *between steamships: rules for the navigation of the Thames, rule* 23 *: meaning of "before rounding points"*]—By rule 23 of the Rules for the Navigation of the Thames, "steam vessels navigating against tide shall, before rounding" certain points, "ease their engines and wait until any other vessels rounding the point with the tide have passed clear":—*Held*, that the points mentioned in this rule begin where a vessel having to go round them would, if there were nothing in the way, be obliged to use her steerage for the purpose of continuing her course, and ends where that necessity ceases; and that the words "before rounding" in the rule mean the time when, if there were nothing in the way, a vessel would have to begin to use her steerage power in order to go round a point as defined by the rule. *Held*, further, that by the rule the steamship navigating against the tide is bound to ease as much as she can having regard to her own safety. *The Margaret* (App.), 17

—— *damages: commission for bail in salvage action*]—Commission paid for bail in a salvage action, brought in respect of services rendered to a vessel which has been damaged by collision, cannot be recovered as damages from the owners of the wrong-doing ship. *The British Commerce*, 72

—— *fishing-smack: globular lantern: article* 11 *of the regulations for preventing collisions at sea*]—A fishing-smack, trawling with a globular lantern exhibited from her weather crosstree, was run down by a steamer which was overtaking her:—*Held*, that the smack was to blame for neglecting to shew a light from her stern, and thereby infringing article 11. *The Pacific*, 67

—— *fog: risk of collision: approaching ships: regulations for preventing collisions at sea: rule of conduct: article* 18]—Where in a dense fog those in charge of a steamship hear a whistle or fog-horn on either bow, which when repeated shews that the other vessel is approaching and is in the neighbourhood of their vessel, it becomes necessary, in order to obey article 18, for them to stop and reverse their engines. *The John McIntyre* (App.), 115

—— *fog: speed of sailing ship: fog horn*]—Though no absolute rule can be laid down, it is the duty of a sailing ship in a fog, where she may expect to meet numerous vessels, to go at as low rate of speed as is consistent with keeping good steerage way. *The Zadok*, 72

The fact that a fog-horn which is proved to have been sounded is not heard on board an approaching vessel is not necessarily proof of negligence on the part of those on board that vessel. Ibid.

—— *lights: regulations of* 1863 *for preventing collisions at sea, article* 9 *: regulations of* 1880 *for preventing collisions at sea, article* 10*: steam trawler with trawl down: fishing vessels "attached to their nets and stationary"*]—By article 9 of the Regulations of 1863 for Preventing Collisions at Sea, "Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light." *The Dunelm* (App.), 81

To be "stationary" within the meaning of the article, a fishing vessel must not have more way on than is necessary to keep herself under command whilst attached to her nets. If it is necessary even for the purpose of rendering her fishing more effective that she should have more way on, she is not "stationary," and must carry the lights of a vessel under way. Ibid.

A steam trawler with her trawl on the ground was making two and a half knots through the water and four and a half knots over the ground, and was carrying no side lights, but merely the white light prescribed by article 9. She came into collision with the defendants' steamer:—*Held*, that article 9 was applicable to trawlers, but that the trawler in question was not "stationary" within the meaning of the article, and should have carried the lights of a steamer under way. Ibid.

Judgment of BUTT, J., affirmed. Ibid.

—— *overtaking and crossing ships: articles* 16 *and* 20 *of the regulations for preventing collisions at sea*]—A steamship which is overtaking as well as crossing the course of another is bound to keep out of the way, under the provisions of article 20; and article 16 does not apply. *The Seaton*, 15

—— *regulations for preventing collisions at sea: departure from rules to avoid immediate danger: articles* 18 *and* 23*:* 36 & 37 *Vict. c.* 85. *s.* 17]—In order to take a vessel out of article 18 and bring her within article 23 of the Regulations for Preventing Collisions at Sea, the departure from article

Collision (continued)—

18, which, under the provisions of 36 & 37 Vict. c. 85. s. 17, must be read with article 23, must not only be reasonable, but the only chance of avoiding an immediate danger. *The Benares* (App.), 2

The Khedive (Law Rep. 5 App. Cas. 876) explained. Ibid.

—— *risk of collision: regulations for preventing collisions at sea*, 1880, *articles* 16, 18, *and* 22: *crossing ships*]—Two steamships, the *A.* and the *B.*, were on crossing courses at about right angles, the *A.* having the *B.* on her starboard hand, so that it became the duty of the *A.*, under article 16 of the Regulations for Preventing Collisions at Sea, to keep out of the way of the *B.* She did not do so, and the ships being then a quarter of a mile apart, the *B.* whistled and slackened her speed, the *A.* kept on her course, and when the two ships were within 300 yards of each other, the *B.* stopped and reversed, but a collision took place:—*Held*, that the *B.* was partly to blame for the collision, as she ought to have stopped and reversed sooner; that the provisions of articles 16 and 18 of the Regulations for Preventing Collisions at Sea apply to the time when a risk of collision can be avoided, and not to the time when the risk is already fixed, and that in the circumstances of this case the *B.* was not justified in waiting till the two vessels were within 300 yards of each other before she stopped and reversed, for that the provision in article 22 as to a vessel keeping her course does not refer to the speed at which, but to the direction in which a vessel is going. *The Beryl* (App.), 75

—— *signals for assistance: stopping and reversing*]—A vessel which has been in collision with another is bound, in order to comply with the provisions of section 16 of the Merchant Shipping Act, 1873, to answer signals made by the vessel with which she has been in collision, even where she is unable, owing to the damage she has herself sustained, to stand by the other ship. *The Emmy Haase*, 43

The officer in charge of a steamship which is approaching another so as to involve risk of collision is not required to stop and reverse his engines instantaneously, but some short time must be allowed him in which to judge what course he ought to adopt in the circumstances. Ibid.

—— *Thames rules: merchant shipping act amendment act*, 1873, *s.* 17]—A ship will not be held to blame, under the provisions of the 17th section of the Merchant Shipping Act, 1873, for an infringement of one of the Thames Rules, where such infringement does not actually contribute to the collision. *The Harton*, 25

—— See DAMAGES; LIMITATION OF LIABILITY.

Commission for Bail. See COLLISION.

Compromise of Action. See ESTOPPEL.

Compulsory Pilotage—*pilotage district: ship passing through: loading or discharging: 25 & 26 Vict. c. 63. s.* 41]—A steamship, while on a voyage between two places outside a pilotage district, entered a port within such a district in order to take in coal for the voyage, and while there was in charge of a duly licensed pilot:—*Held*, that the ship was bound when so loading in such a district to employ a pilot, that the words "loading or discharging" in 25 & 26 Vict. c. 63. s. 41, are not confined to loading or discharging cargo, and that the owners of the ship were not liable for a collision caused by the negligence of the pilot. *The Winston* (App.), 69

Consolidation. See PRACTICE.

Contract. See TOWAGE.

Contributory Negligence. See COLLISION.

Conversion. See ADMINISTRATION; WILL.

Cornwall, Duchy of. See ADMINISTRATION.

Costs—*higher and lower scales: rules of supreme court*, 1883, *order LXV. rule* 9]—The Court will not allow costs on the "higher scale" unless special circumstances of urgency or difficulty are shewn. *The Horace*, 64

The amount at stake in an action is not of itself a sufficient reason for such allowance. Ibid.

—— See PRACTICE; SALVAGE.

Counsel. See PRACTICE.

Cross Actions. See PRACTICE.

Crossing Ships. See COLLISION.

County Court Appeals. See PRACTICE.

Court, Decision of. See COLLISION.

Damages, Measure of—*collision: delay in delivery of cargo: loss of market: tort*]—The plaintiff shipped a cargo of maize on board the *C.*, which was run into by the defendants'

Damages, Measure of (continued)—

ship while in port at G. on a voyage to London, in consequence of which a portion of the cargo which was damaged, together with so much of the sound cargo as was necessary, was discharged to lighten the *C.* The sound portion of the cargo was subsequently re-shipped, and arrived in London later than it otherwise would have done. The market price of maize had in the meantime fallen: —*Held*, that the plaintiffs were not entitled in an action of tort to recover damages from the defendants for the loss of market sustained by them in consequence of the delay in the arrival of the cargo caused by the collision with the defendants' ship. *The Notting Hill* (App.) 56

The Parana (45 Law J. Rep. P., D. & A. 108) followed. Ibid.

—— See COLLISION.

Decree Nisi. See ALIMONY; DIVORCE.

Depositions. See PRACTICE.

Desertion—*residence apart: consent of wife obtained by fraud: occasional marital intercourse*]—A husband ceased, in 1880, to cohabit with his wife upon the false pretence that his absence was necessitated by business engagements, but he supplied her with money, and occasional intercourse took place between them which resulted in the birth of a child. In 1884, the wife discovered that her husband had been for several years living with another woman, and she thereupon instituted a suit for dissolution of marriage on the ground of adultery and desertion:—*Held*, that the conduct of the husband did not amount to desertion. *Farmer* v. *Farmer*, 113

Discovery. See PRACTICE.

Discretion. See DIVORCE.

Divorce—*decree nisi: discretion: adultery of petitioner: conviction of respondent for rape*]—A husband obtained a decree *nisi* for a dissolution of marriage, on the ground of his wife's adultery; but, upon the intervention of the Queen's Proctor, the decree *nisi* was rescinded, on the ground of the adultery and cruelty of the petitioner. The parties afterwards resumed cohabitation, and the husband committed fresh acts of cruelty. He was afterwards sentenced to ten years' penal servitude for a rape upon a girl under twelve years of age. The Court, in the exercise of its discretion, pronounced a decree *nisi* for dissolution of the marriage on the wife's petition, notwithstanding her previous adultery. *Collins* v. *Collins*, 116

—— See SETTLEMENT.

Domicil. See WILL.

Estoppel—*res judicata: matter incidentally arising: jurisdiction: rules of Court*, 1883, *order XXV. rule* 2]—In a probate action T. and G., defendants, propounded a will, which, upon a compromise based upon the representation of T. of its genuineness, was admitted to probate. The plaintiff in the probate action subsequently ascertained that the will so admitted to probate was a forgery, and he commenced an action in the Chancery Division against T. and G., and also against the next-of-kin of the testator, to set aside the compromise on the ground that it had been obtained by fraud, and obtained a verdict of a jury in the Queen's Bench Division, to which the action had been transferred, that the compromise so far as it related to T. had been obtained by his fraud, that the will was a forgery, that T. was a party or privy to it, and judgment was given to set aside the compromise. The plaintiff subsequently instituted an action in the Probate, Divorce, and Admiralty Division against T. and G. for revocation of the probate of the will propounded by them:—*Held* (affirming the judgment of SIR J. HANNEN, *ante*, p. 58), that the question whether the will was a forgery was the issue in the action in the Chancery Division, and was not an incidental or subsidiary question; that such question being within the jurisdiction of the Chancery Division, the case fell within the first part of *The Duchess of Kingston's Case* (20 How. St. Tr. 355; 2 Sm. L.C. 803), and that the verdict and judgment in the action in the Chancery Division were conclusive in the present probate action, and that the defendants T. and G. were estopped in that action from denying that the will propounded by them was a forgery. *Priestman* v. *Thomas* (App.), 109

Evidence. See SALVAGE; WILL.

Execution. See WILL.

Executor. See ADMINISTRATION.

Fishing Smack. See COLLISION.

Fog. See COLLISION.

Foreign Law. See ADMINISTRATION.

Fraud. See ESTOPPEL.

Guardian. See ADMINISTRATION.

Husband and Wife—*separation deed: annuity to wife: adultery of wife: dissolution: variation*

Husband and Wife (continued)—

of deed: 22 & 23 Vict. c. 61. s. 5]—In June, 1881, a deed of separation was executed by a husband and wife, under which the husband covenanted to pay for the benefit of the wife an annuity of 52*l.* Shortly after the separation she committed adultery, and the husband obtained a decree for dissolution of the marriage. On a petition presented by the husband to have the deed of separation set aside or varied,—*Held*, by BUTT, J., treating the case as substantially one of alimony, that the deed ought not to be varied; but *Held*, by the Court of Appeal, that the case ought not to be treated as one of alimony, but that the Court had a discretion as to the allowance which, under the circumstances, ought to be made to the guilty wife; and that, under all the circumstances, the allowance ought to be reduced by one half. *Clifford* v. *Clifford* (App.), 68

—— See SETTLEMENT.

Inspection. See PRACTICE.

Intestacy. See ADMINISTRATION.

Jurisdiction. See COLLISION; ESTOPPEL.

Liens, Priority of—*wages: shipwrights: costs*]—Several actions were brought by different plaintiffs against a foreign ship, which was sold at the instance of one of the plaintiffs and the proceeds brought into Court:—*Held*, that the plaintiff, at whose instance the proceeds were so made available for the other claimants, was entitled to be paid his costs out of the fund in Court, up to and inclusive of the sale of the ship, in priority to other claimants. *Held*, also, that the lien of seamen takes priority over the common law possessory lien of a shipwright, for wages earned before the shipwright's lien attached; for subsistence money from the date of leaving the service of the ship till the return home of the seamen; and for the cost of their passage home. *The Immacolata Concezione*, 19

Lights. See COLLISION.

Lights on Fishing Smack. See COLLISION.

Limitation of Liability—*shipping: collision: "improper navigation": merchant shipping act*, 1862 (25 & 26 *Vict. c.* 63), *s.* 54, *sub-s.* 4]—Where a collision at sea is caused through the breakdown of the steering gear, owing to a nut being improperly fixed through the negligence not of the crew but of engineers employed by the owners ashore, "the damage is caused by the improper navigation of the ship" within sub-section 4 of section 54 of the Merchant Shipping Act, 1862, and the owners are entitled to a judgment for limitation of liability. (Affirming the judgment of the Court below, *ante*, p. 4.) *The Warkworth* (App.), 65

Per BRETT, M.R.—The section applies to all damage wrongfully done by the ship to another ship while the damaging ship is being navigated, where the wrongful act is due to the negligence of any person for whose negligence the owner is responsible, unless it occurred with the privity of the owner. Ibid.

Limited Grant. See ADMINISTRATION.

Maintenance. See HUSBAND AND WIFE.

Market, Loss of. See DAMAGES.

Married Woman. See WILL.

Master, Authority of. See BOTTOMRY BOND.

Naturalisation Act. See WILL.

Negligence. See TOWAGE.

Nullity of Marriage. See ALIMONY.

Particulars. See PRACTICE.

Passage, Court of. See PRACTICE.

Pilotage District. See COMPULSORY PILOTAGE.

Pleading. See PRACTICE.

Power of Appointment. See WILL.

Practice—*appeal from passage court of Liverpool: time for appeal expired: enlargement of time: the county courts admiralty jurisdiction act*, 1868 (31 & 32 *Vict. c.* 71), *ss.* 25, 26 *and* 27: *the county courts act*, 1875 (38 & 39 *Vict. c.* 50), *s.* 6]—Section 6 of the County Courts Act, 1875, provides an alternative mode of appeal by way of motion, but does not supersede the old practice with regard to appeals from Inferior Courts having Admiralty jurisdiction. The provisions of the Act of 1868, therefore, relating to appeals from the Court of Passage, are still in force, and the discretionary power of the Court to allow an appeal after the time for such appeal has expired, remains. *The Humber*, 7

—— *cross actions: consolidation: plaintiff in consolidated actions*]—Where cross actions

Practice (continued)—

have been commenced and consolidated, the party who has first commenced proceedings will be made the plaintiff in the consolidated actions, even though the action first commenced has been brought in the County Court, and the second action has been instituted in the High Court, and the first action has been transferred to the High Court at the instance of the plaintiff in the County Court. *The Never Despair*, 30

—— *discovery: inspection of documents: copies of depositions made before receiver of wrecks: privilege*]—In a collision action, the plaintiffs' solicitors, for the purposes of the action, obtained from the Board of Trade copies of depositions made before the receiver of wrecks by the master and crew of the plaintiffs' ship as to the circumstances of the collision:—*Held*, that the copies, having been obtained by the solicitors for the purposes of the action, were privileged, and that the Court would not enquire for what purpose the original depositions were made. *The Palermo*, 6

—— *particulars: probate action: unsoundness of mind*]—The Court will not order the defendant in a probate action to give particulars of a plea that the deceased was not of sound mind. *Hankinson* v. *Barningham*, 16

—— *pleading: salvage: statement of claim: rules of the supreme court*, 1883, *rules* 5 and 7]—The forms of pleadings in the appendix to the new rules are given as indicating only the character of pleading it is desired to introduce, and are not to be slavishly adhered to where it is desirable that fuller information should be given. *The Isis*, 14

In a salvage action in respect of services rendered to a derelict ship where the statement of claim followed the form given in Appendix C.,—*Held*, that the statement of claim was insufficient. Ibid.

—— *probate division: appeal from order in chambers: special leave*]—The practice with reference to appealing from orders in chambers in the Probate Division is the same as that which is followed in the Chancery Division—namely, that special leave must be obtained from the Judge, which leave is signified by a certificate from the Judge that he does not require to hear any further argument in the case. *Rigg* v. *Hughes* (App.), 62

—— *proceedings by default: notice of trial: rules of supreme court*, 1883, *order XIII. rule* 12: *order LXIV. rule* 9]—In Admiralty actions *in rem*, where the defendant has failed to appear, the plaintiffs, besides filing statement of claim, must file notice of trial; though, upon sufficient grounds being shewn, the Court might dispense with such notice. *The Avenir*, 63

—— *salvage: pleading: statement of claim: evidence*]—The statement of claim in salvage actions should contain such facts as, if admitted, will constitute the whole of the plaintiff's case, as the Court will decline to admit evidence at the hearing, except on special grounds, where the facts alleged in the statement of claim are admitted. *The Hardwick*, 23

—— *taxation of costs: prints of record in another action: three counsel*]—A collision occurred between the *P. M.* and the *M.*, in consequence of which the *P. M.* also collided with the *D.*, doing damage to the latter to the extent of 2,700*l.* The *P. M.* and the *D.* commenced actions against the *M.*; but the *D.* stood by until the *P. M.*'s action was decided. In the *P. M.*'s action the *M.* was found alone to blame. Prints of the evidence taken in the *P. M.*'s action were obtained by the solicitors for the *D.* from the solicitors for the *P. M.*, and were used in the action by the *D.* against the *M.* Three counsel were employed in the latter action on behalf of the *D.*:—*Held*, that the solicitors for the *D.* were entitled to charge the defendants 3*d.* per folio for the prints of the record. *Held*, further, that, considering the amount of the damage, the allowance of the costs of three counsel was not unreasonable. *The Mammoth*, 70

—— *will: probate: allegation of undue influence: particulars: order XIX. rules 6 and* 7]—Where probate of a will is resisted on the ground of undue influence, it has been the practice of the Probate Court to order the names of the persons alleged to have exercised the undue influence to be disclosed, but to refuse further particulars. *The Marquis of Salisbury* v. *Nugent* (App.), 23

Semble,—This practice is not altered by the Rules of Court, 1883, Order XIX. rules 6 and 7. Ibid.

—— See SALVAGE.

Probate—*limited grant: English will: foreign will*]—The testator executed a will in England, by which he disposed exclusively of English property. He afterwards executed in the Argentine Republic a will in the Spanish language, and valid according to the law of the Argentine Republic, by which he disposed of property in that Republic and cancelled all previous dispositions. According to the law of the Argentine Republic the Spanish will could affect only such property as was

Probate (continued)—

situated within the Republic. *In the goods of Smart*, 57

The Court, on proof being given of the consent of all the parties interested, granted probate of the English will only. Ibid.

——, **Revocation of.** See ESTOPPEL.

—— See PRACTICE; WILL.

Real Estate. See ADMINISTRATION.

Repairs, Cost of. See SALVAGE.

Representation. See ADMINISTRATION.

Res Judicata. See ESTOPPEL.

Restitution of Conjugal Rights—*decree: enforcement: attachment:* 20 & 21 *Vict. c.* 85. *ss.* 17 *and* 22]—A decree against a husband for restitution of conjugal rights is not satisfied by the respondent providing a house with furniture and servants for the use of the petitioner, and offering to pay her a yearly allowance, if he does not return to cohabitation, and his obedience to the decree will therefore be enforced by attachment. *Weldon* v. *Weldon*, 9

Revenue. See WILL.

Revocation. See WILL.

Rules of Navigation. See COLLISION.

Russian Empire. See ADMINISTRATION.

Sailing Rules. See COLLISION.

Salvage—*costs of repairs to salving ship: evidence of, when receivable*]—*Per* BRETT, M.R.—The Judge of the Admiralty Division is not bound in every salvage action to receive *ex debito justitiæ* evidence of the costs of repairs caused by the performance of the salvage services and of the detention of the salving ship whilst such repairs are being executed; nor is he bound to decree in terms as part of his award that such a specific ascertained amount shall be paid to the salvors for damages and costs incurred in rendering the services as shall be sufficient to indemnify them. It is in the discretion of the Judge whether he shall receive or reject such evidence, and an amount in respect of the damages incurred may, if proper under the circumstances, be included in his award. *The City of Chester* (App.), 90

Per BAGGALLAY, L.J., and LINDLEY, L.J.—Where, in a salvage action, it appears that the value of the property saved is ample not only to defray any amount of remuneration which could be reasonably awarded to the salvors, but also to leave a substantial surplus to the owners of the property saved, evidence ought to be received to shew the amount of the loss and damages actually sustained by the owners of the salving ship with a view to fixing the remuneration at such a sum as will cover such losses and remunerate them for such further risk as they ought to be compensated for. Ibid.

The De Bay (52 Law J. Rep. P.C. 57) and *The Sunniside* (52 Law J. Rep. P., D. & A. 76) discussed. Ibid.

—— *exorbitant claim: bail: costs*]—Where the plaintiffs in a salvage action arrested the defendants' ship and required bail to be given for an exorbitant sum, the Court ordered the plaintiffs to pay all the costs incurred by the defendants in procuring bail. *The George Gordon*, 28

—— *services interrupted*]—Services which contribute to the ultimate safety of a vessel in distress, if interrupted before completion without default of the salvors, are entitled to some remuneration, not only where a vessel has been saved from a position of imminent peril, but also in a case where the vessel is brought into a position of greater comparative safety than that in which she was when she asked for assistance. *The Camellia*, 12

—— See PRACTICE.

Separation Deed. See HUSBAND AND WIFE.

Settlement—*husband and wife: dissolution of marriage: capital and income:* 22 & 23 *Vict. c.* 61. *s.* 5; 41 *Vict. c.* 19. *s.* 3]—The Court has full power under section 5 of 22 & 23 Vict. c. 61, if, in the exercise of its discretion, it thinks it expedient to do so, to vary a settlement by giving the whole or part not only of the income but of the capital of the trust fund to one party or the other. (Affirming the judgment of the Court below, *ante*, p. 29.) *Ponsonby* v. *Ponsonby* (App.), 112

—— *variation of: appointment of new trustees. joint power: extinguishment: jurisdiction*]—Upon a petition for variation of settlements after a dissolution of marriage the Court has jurisdiction to extinguish a joint power to appoint new trustees. *Oppenheim* v. *Oppenheim*, 48

Ship. See COLLISION.

Shipwrights. See LIENS, PRIORITY OF.

Stamp. See CHARTER-PARTY.

Statement of Claim. See PRACTICE.

Steam Trawler. See COLLISION.

Taxation. See PRACTICE.

Thames, Navigation of. See COLLISION.

Towage—*negligence: contract exempting owners of tug from liability*]—Where the owners of a tug gave notice that they would not be answerable for any loss or damage occasioned to any vessel, boat or craft, while in tow of the tug, by any negligence or default of them or their servants, and such notice formed part of the contract between the plaintiff and the defendants,—*Held*, affirming the decision of the Judge of the Admiralty, that the owners of the tug were not liable for the loss of the plaintiff's vessel while being towed by the defendant's tug, although the tug took in tow more vessels than she could manage, and more than were allowed by the regulations made under the Piers and Harbours Act, 1847 (10 & 11 Vict. c. 27), and the Yarmouth Port Act, 1866. *Cole* v. *The Great Yarmouth Steam-Tug Company. The United Service* (App.), 1

Trial, Notice of. See PRACTICE.

Tug. See TOWAGE.

Undefended Action. See PRACTICE.

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Wages. See LIENS, PRIORITY OF.

Will—*alien: foreign domicil: domicil of origin English: form of will: probate in England: Lord Kingsdown's act* (24 & 25 *Vict. c.* 114), *s.* 1; *naturalisation act*, 1870 (33 & 34 *Vict. c.* 14), *ss.* 2 *and* 10]—The object of the 2nd section of the Naturalisation Act, 1870, was to put aliens on the same general footing with British subjects as to acquiring, holding, and disposing of property in England; but it does not give an alien power to dispose of the property in a form not in accordance with the law of his place of domicil. *Bloxam* v. *Favre* (App.), 26

A testatrix, whose domicil of origin was English, married a German subject and resided in Germany until her death in 1872; she survived her husband, and made a will which was valid according to the requirements of English law but not according to German law:—*Held*, that the will could not be admitted to probate in England. Ibid.

Decision of the President of the Probate Division affirmed. Ibid.

—— *execution: attestation: presence of attesting witnesses during signature by testator: wills act*]—Where a will is *ex facie* duly executed, there being no suggestion of fraud, probate ought not to be refused merely because the attesting witnesses cannot, when examined, recollect either having seen the testator sign the document or that his signature was there before they signed, and did not know the nature of the document which they were signing. *In re Sanderson. Wright* v. *Sanderson* (App.), 49

—— *married woman: power of appointment over real property: equitable conversion: probate duty*]—The Probate, Divorce, and Admiralty Division of the High Court is not bound by the practice of the Court of Probate before the passing of the Judicature Acts. *In the goods of Gunn*, 107

Freehold property, which is by the doctrine of equitable conversion to be considered as personalty, is chargeable with probate duty, and a will which disposes of such property under a power of appointment is entitled to probate. Ibid.

—— *revocation: later will not found: memorandum at foot of earlier will*]—The testator duly executed a will in 1864, by which he constituted his wife universal legatee and appointed her sole executrix. In 1877 he duly executed a second will, which was not forthcoming at the time of his death, and as to the contents of which the only evidence was a declaration by the testator at the time of executing it that he had altered his affairs, and that he had taken care of his wife, and that there would be something for one of his nephews. The earlier will was found after the testator's death, with a memorandum at the foot of it in the testator's handwriting to the effect that the will was "useless, a new will having been made in October, 1877," on account of his wife telling him that she was sorry she had ever seen him:—*Held*, that, in the absence of proof of a change of executrix, or of a revocation clause in the second will, the earlier will was not revoked. *Hellier* v. *Hellier*, 105

Semble, that the memorandum at the foot of the earlier will was not admissible as evidence of an intention to revoke it. Ibid.

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OF THE UNITED KINGDOM OF

GREAT BRITAIN AND IRELAND:

PASSED IN THE

FORTY-SEVENTH AND FORTY-EIGHTH YEARS

OF THE REIGN OF HER MAJESTY

QUEEN VICTORIA

At the Parliament begun and holden at Westminster, the 29th Day of April, *Anno Domini* 1880, in the Forty-third Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:

Being the FIFTH SESSION of the TWENTY-SECOND PARLIAMENT of the United Kingdom of GREAT BRITAIN and IRELAND.

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AT No. 5, QUALITY COURT, CHANCERY LANE, LONDON.

MDCCCLXXXIV.

Treasury in agreement with the National Debt Commissioners may determine to be necessary in order to secure the said Commissioners from any loss by reason of the conversion, and the said equivalent capital value shall be ascertained on the basis of the interest yielded by the three pounds per centum consolidated perpetual annuities at the price certified by the Governor and Company of the Bank of England to be the average price on the said day of conversion.

3. Whereas in pursuance of section seven of the National Debt Act, 1883, the Treasury paid one million pounds for the redemption of a portion of the terminable annuity created in pursuance of the Indian Loan Act, 1881, and it is expedient to authorise the redemption of the residue of that annuity: Be it therefore enacted as follows:

The Commissioners of Her Majesty's Treasury may from time to time pay out of the Consolidated Fund, or the growing produce thereof, to the Commissioners for the Reduction of the National Debt such sums as are necessary for the redemption of the whole or part of the residue of the said terminable annuity, and the National Debt Act, 1883, shall apply in like manner as if any sum so paid were the sum of one million pounds mentioned in section seven of that Act, and upon the cancellation in accordance with that section, as hereby extended, of the last remaining portion of the said annuity, the said section seven and the Indian Loan Act, 1881, shall be repealed.

CHAP. 3.

London Brokers' Relief Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Admission by court of aldermen, and payments by brokers in respect thereof abolished.*
3. *Penalty repealed.*
4. *Repeal of s. 6. of Act of* 1870.

An Act for the Relief of the Brokers of the City of London.

(24th March 1884.)

WHEREAS by an Act of Parliament made in the sixth year of the reign of Queen Anne, intituled "An Act for repealing the Act of the "first year of King James the First, intituled "'An Act for the well garbling of spices, and "'for granting an equivalent to the city of "'London by admitting brokers,'" it was, amongst other things, enacted that, from and after the determination of the then session of Parliament, all persons that should act as brokers within the city of London and liberties thereof should from time to time be admitted so to do by the court of mayor and aldermen of the said city for the time being, under such restrictions and limitations for their honest and good behaviour as the said court should think fit and reasonable, and should upon such their admission pay to the chamberlain of the said city for the time being, for the uses therein-after mentioned, the sum of forty shillings, and should also yearly pay to the said uses the sum of forty shillings upon the twenty-ninth day of September in every year; and it was further enacted, that if any person or persons, from and after the determination of the then session of Parliament, should take upon him to act as a broker or employ any other under him to act as such within the said city and liberties, not being admitted as aforesaid, every such person so offending should forfeit and pay to the use of the said mayor and commonalty and citizens of the said city for every such offence the sum of twenty-five pounds, to be recovered as in the said Act is mentioned:

And whereas by an Act (local and personal) made and passed in the fifty-seventh year of the reign of King George the Third, intituled "An Act for granting an equivalent for the "diminution of the profits of the office of "ganger of the city of London, and increasing "the payments to be made by brokers," after reciting, amongst others things, the beforementioned Act, it was, amongst other things, enacted that all persons that from and after the first day of July next after the passing of that Act should be admitted to act as brokers within the city of London and liberties thereof by the said court, in pursuance of the said recited Act of Parliament, should upon such their admission, over and above the sum of forty shillings required to be paid by the said recited Act, pay to the chamberlain of

Great Britain and Ireland (after paying or reserving sufficient to pay all such sums of money as have been directed by former Acts of Parliament to be paid out of the same, but with preference to all other payments which may hereafter be charged upon or payable out of the said fund), and the same shall from time to time be paid quarterly, free and clear of all taxes and deductions whatsoever, except income tax, to the said Right Honourable Sir Henry Bouverie William Brand, G.C.B., during his natural life, which said annuity shall commence and take effect upon the day upon which he the said Right Honourable Sir Henry Bouverie William Brand, G.C.B., ceased to hold the office of Speaker of the House of Commons, the first payment to be computed from the said day until the next ensuing quarterly day of payment, and from thenceforward shall be paid quarterly on the fifth day of July, the fifth day of October, the fifth day of January, and the fifth day of April, by equal portions; and a proportionate part shall be payable for the period between the last quarterly day of payment and the date of the determination of the said annuity: Provided that one half of the said annuity shall abate and be suspended during any period in which the said Right Honourable Sir Henry Bouverie William Brand, G.C.B., may hereafter hold any place, office, or employment under her Majesty of equal or greater amount in salary, profits, or emolument than the amount of such annuity.

2. The Commissioners of Her Majesty's Treasury are hereby authorised and required by warrant or warrants under their hands to direct the payment of the said annuity according to the provisions herein-before contained.

CHAP. 2.

National Debt Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Amendment as to calculation of terminable annuity upon conversion of three per cents held by National Debt Commissioners into two and a half per cents.*
3. *Redemption of residue of terminable annuities under 44 & 45 Vict. c. 54. 46 & 47 Vict. c. 54.*

An Act to make further provision respecting the Conversion into Two and a half per Cent. Annuities of Three per cent. Annuities held by the National Debt Commissioners on account of Savings Banks, and for the Redemption of the Indian Loan Annuity, 1881. (24th March 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the National Debt Act, 1884.

2. Whereas by the Savings Banks Act, 1863, as amended by the National Debt Act, 1883, the Commissioners of Her Majesty's Treasury (in this section referred to as the Treasury) were empowered to convert portions of the three pounds per centum perpetual annuities held by the Commissioners for the Reduction of the National Debt (in this section referred to as the National Debt Commissioners) on account of post office savings banks into an equal amount of two pounds ten shillings per centum perpetual annuities, and to pay the difference in value by a terminable annuity for a term not exceeding twenty years from the date of the creation thereof and of an amount determined as therein mentioned, and it is expedient to alter the amount of the said annuity: Be it therefore enacted as follows:

Any such terminable annuity shall be of equivalent capital value to the difference between the prices certified by the Governor and Company of the Bank of England to be on the day agreed on by the Treasury and the National Debt Commissioners as the day of conversion, the market prices respectively of the perpetual annuities converted and the two pounds ten shillings per centum perpetual annuities into which they are converted, with such addition to the said difference as the

absolutely or for the time mentioned in such certificate:

And whereas it is expedient that brokers should be relieved from the necessity of being admitted by the court, and from the payment to the chamberlain of the said city of the said sums of forty shillings and three pounds on admission, and that the yearly sums of forty shillings and three pounds payable by or under the said recited Acts should cease to be payable after the twenty-ninth day of September one thousand eight hundred and eighty-six, and that the court should from that date be relieved from the duty of keeping a list containing the names and addresses of brokers as herein-after provided:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows;

1. This Act may be cited as the London Brokers' Relief Act, 1884.

2. After the twenty-ninth day of September one thousand eight hundred and eighty-six the court shall not require nor shall it be necessary for any person to be admitted by the court to act as a broker within the city of London and the liberties thereof, and brokers so acting shall not after that day be liable to pay to the chamberlain of the said city the yearly or other sums of forty shillings and three pounds respectively made payable by the before recited Acts or some or one of them, or any other sum or sums of money whatsoever, anything in the said Acts or in any of them to the contrary notwithstanding.

3. So much of the second section of the said Act of the fifty-seventh year of the reign of King George the Third, as imposes a penalty of one hundred pounds on any person acting as a broker, or employing or causing or permitting or suffering any person or persons to be employed with, under, or for him to act as such, within the said city and liberties, not being admitted in pursuance of the said Act of the sixth year of the reign of Queen Anne, is as from the twenty-ninth day of September one thousand eight hundred and eighty-six hereby repealed.

4. Section six of the London Brokers' Relief Act, 1870, is as from the twenty-ninth day of September one thousand eight hundred and eighty-six hereby repealed.

CHAP. 4.

Consolidated Fund (No. 1) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of* 1,384,655*l.* 14*s.* 10*d. out of the Consolidated Fund for the service of the years ending* 31*st March* 1883 *and* 1884.
2. *Issue of* 10,432,850*l. out of the Consolidated Fund for the service of the year ending* 31*st March* 1885.
3. *Power to the Treasury to borrow.*
4. *Short title.*

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-three, one thousand eight hundred and eighty-four, and one thousand eight hundred and eighty-five. (28th March 1884.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of

the said city for the time being the sum of three pounds, and should also yearly pay to the said chamberlain, over and above the said yearly sum of forty shillings required to be paid by the said recited Act, the sum of three pounds on the twenty-ninth day of September in every year; and it was, amongst other things, further enacted, that so much of the said recited Act as imposed a penalty of twenty-five pounds upon any person who should take upon him to act as a broker, or employ any person under him to act as such, not being admitted in pursuance of the said recited Act, should be and the same was thereby repealed; and that, from and after the passing of the now reciting Act, if any person should take upon him to act as a broker or employ or cause, permit, or suffer any person or persons to be employed with, under, or for him to act as such within the said city and liberties, not being admitted in pursuance of the said recited Act, every such person so offending should forfeit and pay to the use of the mayor and commonalty and citizens of the said city for every such offence the sum of one hundred pounds, to be recovered as in the now reciting Act is mentioned:

And whereas the said court of mayor and aldermen of the said city (herein-after called the court), acting by virtue of the powers conferred upon them by the said recited Acts or one of them, or by virtue of some other authority from time to time, made and established rules and regulations for the admission of brokers within the city of London and liberties thereof, and imposed restrictions and limitations on the manner in which the persons whom they admitted into the office and employment of a broker within the said city and liberties thereof were to carry on their business as brokers, and exercised and claimed a right to exercise jurisdiction and control over such brokers for the purpose of enforcing the observance of the said regulations, restrictions, and limitations:

And whereas the court also required every broker admitted by them to find two sureties, to be approved of by the court, to enter into a bond for the due and just execution by the broker of his said office and employment, or in place of such sureties required such broker to transfer into the joint names of himself and the chamberlain of the said city stock in the public funds to the nominal amount of one thousand pounds:

And whereas the court also required each broker admitted by them to enter into his own bond in the penal sum of one thousand pounds to secure the due performance of his duties as a broker, and also to secure the annual payment of the sums of two pounds and three pounds to the chamberlain of the city, pursuant to the provisions of the said Act of the sixth year of the reign of Queen Anne and of the fifty-seventh year of the reign of King George the Third:

And whereas by the London Brokers' Relief Act, 1870, after reciting as or to the effect before recited, and that it was expedient to relieve the said brokers from the necessity of providing such sureties or entering into such personal bond as aforesaid, and from the jurisdiction and supervision exercised by the court over the brokers, it was, amongst other things, enacted that after the passing of the Act now in recital the court should not require a broker by himself or sureties to give any bond on his admission as a broker, and the jurisdiction, supervision, and control of the court over brokers in the said city of London and the liberties thereof should cease, and the court should not have the power to make or enforce any rules, orders, regulations, restrictions, limitations, or penalties affecting, except as therein-after mentioned, the admission of such brokers or the manner in which the business of such brokers should be carried on: And it was further enacted that, except as therein expressly enacted, the Act now in recital should not extend to take away from the court such right as they had then under the before recited Acts to require brokers to be admitted, or to repeal the penalty of one hundred pounds imposed by the said Act of the fifty-seventh George the Third in the case therein mentioned, or affect the liability of brokers when admitted to pay to the chamberlain of the said city for the uses mentioned in the said before recited Acts respectively the sums of forty shillings and three pounds on admission, and the yearly sums of forty shillings and three pounds made payable by the said before recited Acts respectively: And it was further enacted, that the court should keep a list containing the names and addresses of all brokers who should from time to time have been admitted, and if any such broker should be convicted in any criminal court of felony or fraud, or if a judge of any of the superior courts of law or equity or a judge in bankruptcy should in any action, suit, or other proceeding prosecuted or depending before such judge, and to which such broker should be a party, certify (as he was thereby empowered to do) that such broker had been guilty of fraud, and that he ought to be disqualified from acting as a broker altogether, or for such period as such judge should name in the certificate, such broker should accordingly be disqualified as from the date of such conviction or certificate, and his name should thereupon be removed by the court of aldermen from the list of brokers either

absolutely or for the time mentioned in such certificate:

And whereas it is expedient that brokers should be relieved from the necessity of being admitted by the court, and from the payment to the chamberlain of the said city of the said sums of forty shillings and three pounds on admission, and that the yearly sums of forty shillings and three pounds payable by or under the said recited Acts should cease to be payable after the twenty-ninth day of September one thousand eight hundred and eighty-six, and that the court should from that date be relieved from the duty of keeping a list containing the names and addresses of brokers as herein-after provided:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the London Brokers' Relief Act, 1884.

2. After the twenty-ninth day of September one thousand eight hundred and eighty-six the court shall not require nor shall it be necessary for any person to be admitted by the court to act as a broker within the city of London and the liberties thereof, and brokers so acting shall not after that day be liable to pay to the chamberlain of the said city the yearly or other sums of forty shillings and three pounds respectively made payable by the before recited Acts or some or one of them, or any other sum or sums of money whatsoever, anything in the said Acts or in any of them to the contrary notwithstanding.

3. So much of the second section of the said Act of the fifty-seventh year of the reign of King George the Third, as imposes a penalty of one hundred pounds on any person acting as a broker, or employing or causing or permitting or suffering any person or persons to be employed with, under, or for him to act as such, within the said city and liberties, not being admitted in pursuance of the said Act of the sixth year of the reign of Queen Anne, is as from the twenty-ninth day of September one thousand eight hundred and eighty-six hereby repealed.

4. Section six of the London Brokers' Relief Act, 1870, is as from the twenty-ninth day of September one thousand eight hundred and eighty-six hereby repealed.

CHAP. 4.

Consolidated Fund (No. 1) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of* 1,384,655*l.* 14*s.* 10*d. out of the Consolidated Fund for the service of the years ending* 31*st March* 1883 *and* 1884.
2. *Issue of* 10,432,850*l. out of the Consolidated Fund for the service of the year ending* 31*st March* 1885.
3. *Power to the Treasury to borrow.*
4. *Short title.*

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-three, one thousand eight hundred and eighty-four, and one thousand eight hundred and eighty-five. (28th March 1884.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of

the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-three and one thousand eight hundred and eighty-four the sum of one million three hundred and eighty-four thousand six hundred and fifty-five pounds fourteen shillings and ten pence.

2. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-five, the sum of ten million four hundred and thirty-two thousand eight hundred and fifty pounds.

3. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sums, any sum or sums not exceeding in the whole the sum of eleven million eight hundred and seventeen thousand five hundred and five pounds fourteen shillings and ten pence, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

4. This Act may be cited as the Consolidated Fund (No. 1) Act, 1884.

CHAP. 5.

Valuation (Metropolis) Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Enabling owners and lessees to appeal.*
3. *One notice or objection may include one or more separately assessed hereditaments.*

An Act to amend the Valuation (Metropolis) Act, 1869, by giving greater facilities for appeal to owners and lessees of houses paying rates and taxes in the place of the occupiers. (28th March 1884.)

WHEREAS the Valuation (Metropolis) Act, 1869, does not sufficiently provide for objections to and appeals against valuation lists in the case of owners and lessees who by contract or arrangement pay tenants rates and taxes, more especially when such houses are subdivided into tenements separately rated as hereditaments in such valuation lists:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same (as follows):

1. This Act may be cited as the Valuation (Metropolis) Amendment Act, 1884, and shall be read and construed as one Act with the Valuation (Metropolis) Act, 1869 (herein-after called the principal Act).

2. Section seventy of the principal Act is hereby repealed, and in lieu thereof it is enacted as follows: Where the owner or lessee of any hereditament is liable to be assessed for any rate or tax in the place of the occupier or tenant, or does in fact pay any such rate or tax in his place under any contract or arrangement with him, such owner or lessee shall for the purposes of this Act and the Acts incorporated therewith be deemed to be the occupier of such hereditament, and the person referred to as the ratepayer in sections nineteen and thirty-two of the principal Act, and the person who is to make to the overseers of his parish the statement or return referred to in the fifty-fifth section of the principal Act.

Provided, that any form of return, order, notice, or document required to be given to or served on the occupier under the principal Act shall, except where the owner or lessee is liable to be assessed to or to pay any rate or

tax in the place of the occupier, be deemed to be sufficiently given or served, notwithstanding this Act, if addressed to such occupier and left on the premises to which the return, order, notice, or document relates.

3. Where any occupier or ratepayer, or any owner or lessee deemed to be an occupier or ratepayer within the meaning of section two of this Act, shall object to the valuation list in respect of any hereditaments, whether consisting of a house or houses subdivided into tenements separately assessed as hereditaments or of separate houses or tenements not so subdivided, it shall be lawful for him to include in any one notice made in pursuance of section thirty-three of the principal Act or otherwise, or in any one objection, appeal, or other proceeding under the principal Act and the Acts incorporated therewith, the whole or any one or more of the hereditaments separately assessed and comprised in one valuation list of which he is or is deemed to be the occupier or ratepayer.

CHAP. 6.

Dublin Science and Art Museum Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to take land.*
3. *General provisions as to purchase of lands by Commissioners.*

An Act to confer further powers upon the Commissioners of Public Works in Ireland of acquiring lands in Dublin for all or any of the purposes of the Dublin Science and Art Museum Act, 1877. (28th April 1884.)

WHEREAS by the Dublin Science and Art Museum Act, 1877, (in this Act referred to as "the Act of 1877,") the lands of the Royal Dublin Society therein mentioned were vested in the Commissioners of Public Works in Ireland (in this Act referred to as the Commissioners) and the Commissioners were authorised to acquire other lands for the purpose of the erection of a science and art museum in Dublin, and the establishment of a national library in Dublin, and for the other purposes of that Act:

And whereas the Commissioners require further powers of acquiring lands for the purposes of the Act of 1877:

And whereas duplicate plans showing the lands which may be required by the Commissioners for the purposes of the Act of 1877 (in this Act referred to as the prescribed lands) and also a book of reference to such plans containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of the said lands, and describing the said lands, have been duly deposited with the respective clerks of the peace for the county of the city of Dublin and for the county of Dublin:

And whereas the prescribed lands cannot be acquired without the authority of Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Dublin Science and Art Museum Act, 1884, and this Act and the Act of 1877 may be cited together as the Dublin Science and Art Museum Acts, 1877 and 1884.

2. (1.) The Commissioners may purchase, take, and use for the purposes of the Act of 1877, all or any of the prescribed lands, and may remove the buildings thereon, and sell or dispose of the materials thereof.

(2.) For the purpose of such purchase there shall be incorporated with this Act the Lands Clauses Consolidation Act, 1845, as amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railways Traverse Act, subject as follows:

(*a.*) There shall not be incorporated with this Act sections one hundred and twenty-seven to one hundred and thirty-two, both

inclusive, of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous land, nor sections one hundred and fifty and one hundred and fifty-one relating to access to the special Act.

(*b.*) In the construction of the said Acts for the purposes of this Act, "the promoters of the undertaking" and "the company" shall respectively be construed to mean the Commissioners, and the Act of 1877, as amended by this Act, shall be deemed to be the special Act, but the date for the period of compulsory purchase shall run from the passing of this Act.

(*c.*) Any arbitrator who under the said Acts would be appointed by the Commissioners shall be appointed by the Board of Trade, by order in writing under the hand of the President or one of the secretaries of the Board, and the said Acts shall apply as if in the provisions relating to the arbitrator the Board of Trade were therein mentioned in lieu of the Commissioners.

3. (1.) All lands taken or acquired by the Commissioners under the authority of this Act shall be held by the Commissioners in trust for Her Majesty, Her heirs and successors, for the purposes of the Act of 1877.

(2.) The Commissioners may from time to time, sell, exchange, or lease all or any of the lands taken or acquired by them under the authority of this Act, which may not be required for the purposes of the Act of 1877.

(3.) Any purchase, sale, exchange, or lease of land, in pursuance of this Act, shall not be made or granted, except with the consent of the Commissioners of Her Majesty's Treasury, but it shall not be necessary for the person who sells or purchases any such land, or takes the same in exchange or on lease, to ascertain that the consent of the Commissioners of Her Majesty's Treasury has been given to such sale, purchase, exchange, or lease.

(4.) All moneys paid to the Commissioners in respect of any materials, or lands sold by them under the authority of this Act, shall be paid into the Exchequer, and all expenses of the Commissioners under this Act shall be defrayed out of moneys provided by Parliament.

CHAP. 7.

Isle of Man Harbours Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Regulation of ferries and licenses for ferry boats.*
3. *Power to charge tolls to persons walking on piers, &c.*
4. *Explanation and amendment of 37 Vict. c. 8. s. 3.*
5. *Power to charge dues on cargo landed in lieu of tonnage dues.*
6. *Borrowing powers.*

An Act for amending the Isle of Man Harbours Acts, 1872 and 1874.

(28th April 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Isle of Man Harbours Act, 1884, and shall be construed as one with the Isle of Man Harbours Act, 1872, and Acts amending it, and any expressions defined by those Acts shall in this Act have the meanings thereby assigned to them.

2.—(1.) Sub-section one of section thirteen of the Isle of Man Harbours Act, 1872, is hereby repealed in so far as it relates to ferries and ferry boats, and the power to make bye-laws conferred by that section shall be deemed to extend to all or any of the following purposes; namely,

For the regulation of ferries, and for licensing and regulating ferry boats plying for hire in any of the harbours or on the coast of the island, and for fixing the terms and conditions on which licenses shall be granted, and whether the same shall be granted for a fixed sum or to the highest bidder by auction, or otherwise; and for regulating the conduct of the proprietors, crews, or persons having the charge, command, or management thereof, and for fixing the number of passengers or persons to be carried in any such boats,

and the rates or fares to be paid for conveyance therein.

(2.) Nothing in this section or in the repeal effected thereby shall affect any right or liability vested or accrued under the provision hereby repealed or the continuation or institution of any proceeding for ascertaining or enforcing any such right or liability.

3.—(1.) The Court of Tynwald may from time to time, on the recommendation of the Commissioners, by resolution appoint tolls to be paid by all persons walking upon or otherwise using or coming upon any dock, pier, quay, or landing under the control of the Commissioners.

Provided that—

(*a.*) No toll so imposed on any person shall exceed the sum of threepence for each occasion of using or coming upon the pier, quay, or landing:

(*b.*) The Commissioners may accept a composition from any person in respect of such tolls:

(*c.*) The said tolls and compositions shall be charged equally to all persons under the same circumstances:

(*d.*) The said tolls shall not be charged to any person who is a passenger on or one of the officers or crew of, or otherwise attached to, any vessel using any harbour, dock, quay, or pier under the control of the Commissioners.

(2.) The approval of the Board of Trade shall not be necessary to the imposition of any such tolls, but, subject to the provisions of this section, the provisions of the Isle of Man Harbours Act, 1874, shall, in so far as applicable, apply to tolls under this section as if they were dues under that Act.

(3.) Any tolls imposed under the powers given by this section may be applied in such manner and to such purposes as the Court of Tynwald may by resolution from time to time direct.

(4.) The power to make byelaws conferred by section thirteen of the Isle of Man Harbours Act, 1872, shall be deemed to include the power to make byelaws for regulating the collection and enforcing the payment of tolls, and for otherwise carrying out the purposes of this section.

4. The power to charge dues conferred by section three of the Isle of Man Harbours Act, 1874, shall be deemed to extend to and include a power to charge dues in respect of any vessel entering or using any harbour, dock, quay, pier, or part or appurtenance thereof, under the control of the Commissioners.

5.—(1.) It shall be lawful for the Court of Tynwald, with the approval of the Board of Trade, by resolution from time to time to appoint dues not exceeding sixpence per ton to be paid on all goods landed from any vessel in any harbour, or on any quay or pier under the control of the Commissioners. Where any dues are so appointed to be paid, they shall as regards any vessel from which goods are landed be deemed to be in substitution for the dues appointed to be paid under the Isle of Man Harbours Act, 1874, and the provisions of that Act shall, in so far as applicable, apply to dues under this section.

(2.) The Court of Tynwald may, with the approval of the Board of Trade, from time to time determine to what classes of vessels the dues under this section shall apply, provided that the said dues shall be charged equally to all vessels of the same class under the same circumstances.

6. The Commissioners may borrow on the security of the tolls and dues under this Act in like manner as they may borrow on the security of the sums mentioned in section twenty of the Isle of Man Harbours Act, 1872.

CHAP. 8.

Army (Annual) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Army Act* (44 & 45 *Vict.* c. 58.) *to be in force for specified times.*
3. *Prices in respect of billeting.*

Amendments of Army Act, 1881.

4. *Amendment of s.* 32. *of* 44 & 45 *Vict.* c. 58.
5. *Unauthorised punishments.*

6. *Amendment of s.* 154 *of* 44 *&* 45 *Vict. c.* 58. *as to apprehension of deserters.*
7. *Amendment of s.* 179 (12) *of* 44 *&* 45 *Vict. c.* 58. *as to the Royal Marines.*
8. *Printing of amendments.*
SCHEDULE.

An Act to provide, during twelve months, for the Discipline and Regulation of the Army. (28th April 1884.)

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law:

And whereas it is adjudged necessary by Her Majesty and this present Parliament, that a body of forces should be continued for the safety of the United Kingdom and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of one hundred and forty thousand three hundred and fourteen men, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within Her Majesty's Indian possessions:

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in Her Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid:

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or vessels, merchant ships or vessels, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of Her Majesty's forces by sea:

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers and according to the known and established laws of this realm; yet nevertheless it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law, in their duty, that an exact discipline be observed, and that persons belonging to the said forces who mutiny or stir up sedition, or desert Her Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow:

And whereas the Army Act, 1881, will expire—

(*a.*) In the United Kingdom, the Channel Islands, and the Isle of Man, on the thirtieth day of April one thousand eight hundred and eighty-four; and

(*b.*) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, on the thirty-first day of July one thousand eight hundred and eighty-four; and

(*c.*) Elsewhere, whether within or without Her Majesty's dominions, on the thirty-first day of December one thousand eight hundred and eighty-four:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Army (Annual) Act, 1884.

2.—(1.) The Army Act, 1881, shall be and remain in force during the periods hereinafter mentioned, and no longer, unless otherwise provided by Parliament; that is to say,

(*a.*) Within the United Kingdom, the Channel Islands, and the Isle of Man, from the thirtieth day of April one thousand eight hundred and eighty-four to the thirtieth day of April one thousand eight hundred and eighty-five, both inclusive; and

(*b.*) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, from the thirty-first day of July one thousand eight hundred and eighty-four to the thirty-first day of July one thousand eight hundred and eighty-five, both inclusive; and

(*c.*) Elsewhere, whether within or without Her Majesty's dominions, from the thirty-first day of December one thousand eight hundred and eighty-four to the thirty-first day of December one thousand eight hundred and eighty-five, both inclusive;

and the day from which the Army Act, 1881, is continued in any place by this Act is in relation to that place referred to in this Act as the commencement of this Act.

(2.) The Army Act, 1881, while in force shall apply to persons subject to military law,

whether within or without Her Majesty's dominions.

(3.) A person subject to military law shall not be exempted from the provisions of the Army Act, 1881, by reason only that the number of the forces for the time being in the service of Her Majesty, exclusive of the marine forces, is either greater or less than the number herein-before mentioned.

3. There shall be paid to the keeper of a victualling house for the accommodation provided by him in pursuance of the Army Act, 1881, the prices specified in the Schedule to this Act.

Amendments of Army Act, 1881.

4. In section thirty-two, sub-section one, of the Army Act, 1881, the words "penal servitude" shall be omitted, and the word "imprisonment" shall be substituted.

5. Whereas questions have arisen as to the punishments which may be inflicted on persons subject to military law under the Army Act, 1881, under or by virtue of powers derived from foreign potentates or rulers, and whereas it is expedient to determine such questions: Be it therefore enacted as follows:

There shall be added to section forty-four of the Army Act, 1881, at the end of the section, the following enactment:

No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict, or cause to be inflicted, on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act.

The above enactment shall be numbered as sub-section (13).

6. Whereas by section one hundred and fifty-four of the Army Act, 1881, any constable is authorised to apprehend a person upon reasonable suspicion that he is a deserter, and it is expedient to authorise a justice to grant a warrant for such apprehension: Be it therefore enacted as follows:

There shall be added to section one hundred and fifty-four of the Army Act, 1881, after the first sub-section the following enactment:

(2.) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter to be apprehended and brought forthwith before a court of summary jurisdiction.

The above enactment shall be numbered as sub-section (2), and the numbers of the subsequent sub-sections in the said section one hundred and fifty-four shall be altered accordingly.

7. Whereas the twelfth sub-section of section one hundred and seventy-nine of the Army Act, 1881, is as follows:

"Nothing in the provisions of this Act re-
" lating to the term of enlistment, to the
" conditions of service, to appointment or
" transfer, to transfer to the reserve, to the
" re-engagement or prolongation of service, or
" to forfeiture of service of a soldier of the
" regular forces, or to the rules for reckoning
" service for discharge or transfer to the
" reserve, shall apply to the Royal Marines."

And whereas it is expedient to provide for the transfer of a man of the Royal Marines with his consent to another portion of Her Majesty's regular forces: Be it therefore enacted as follows:

There shall be added to section one hundred and seventy-nine of the Army Act, 1881, at the end of the twelfth sub-section, the following enactment:

Save that if regulations made by a Secretary of State and the Admiralty provide for the transfer of men of the Royal Marines to any other part of Her Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a soldier of the said part of Her Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act.

8. In all copies of the Army Act, 1881, which may be printed after the commencement of this Act the words by this Act directed to be added shall be added thereto and printed therein.

SCHEDULE.

Accommodation to be provided.	Maximum Price.
Lodging and attendance for soldier where hot meal furnished	Two pence halfpenny per night.
Hot meal as specified in Part I. of the Second Schedule to the Army Act, 1881.	One shilling and one penny halfpenny each.
Where no hot meal furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat.	Four pence per day.
Ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse.	One shilling and ninepence per day.
Lodging and attendance for officer - - - - -	Two shillings per night.

Note,—An officer shall pay for his food.

CHAP. 9.

Bankruptcy Appeals (County Courts) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Bankruptcy appeals from County Courts.*

An Act to amend the Law as to Appeals in Bankruptcy from County Courts. (28th April 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Bankruptcy Appeals (County Courts) Act, 1884.

2. Section one hundred and four, subsection 2 (*a*) of the Bankruptcy Act, 1883, is hereby repealed, and instead thereof it is hereby enacted that an appeal shall lie in bankruptcy matters, at the instance of any person aggrieved, from the order of a County Court to a Divisional Court of the High Court of Justice, of which the Judge to whom bankruptcy business shall for the time being be assigned shall for the purpose of hearing any such appeal be a member. The decision of such Divisional Court upon any such appeal shall be final and conclusive, unless in any case it shall seem fit to the said Divisional Court or to the Court of Appeal to give special leave to appeal therefrom to Her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

CHAP. 10.

Trustee Churches (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Power for trustees to transfer church property to representative church body.*
2. *Power to vest trust property in representative church body, and to vary trusts, by unanimous resolution.*
3. *Resolutions invalid until accepted and recorded by legislative authority of church.*
4. *Resolutions, when recorded, to have force of law.*
5. *Saving for power of revocation.*
6. *Short title.*

An Act to amend the Irish Church Act, 1869; and for other purposes.

(28th April 1884.)

WHEREAS by the Irish Church Act, 1869, section seventy, it is enacted as follows: "Nothing in this Act contained shall affect "the patronage and right of presentation to "any proprietary or district parochial church "or endowed chapel of ease which has been "endowed out of private funds, or affect the "property in any such church or chapel or "the property held for the purposes of or "appropriated to the use of the same, or affect "the continuance of the trust relating "thereto as originally constituted:"

And whereas divers churches and chapels of ease had been from time to time, prior to the passing of the said Act, erected in Ireland either in accordance with certain private trusts or under the provisions of the several Church Building Acts for the time being in force in that behalf, and certain parishes or parochial districts had been assigned or annexed to certain of such churches, or were at the time of the passing of the said Irish Church Act, 1869, connected therewith.

And whereas the bishops, clergy, and laity of the said Irish Church assembled as in said Act mentioned are thereby authorised "to "frame constitutions and regulations for the "general management and good government "of the said church and property and affairs "thereof," and they have in pursuance of such authority made divers provisions for regulating the patronage and right of presentation to parishes and ecclesiastical benefices, and for assigning or annexing parochial districts to churches previously non-parochial, and for altering the boundaries of parishes, and for the due management and control of the property and affairs thereof:

And whereas it is desirable that the trustees and patrons of such churches and chapels as aforesaid should be authorised to adopt and apply to such churches and chapels respectively, and the patronage and property thereof, such of the aforesaid provisions and regulations as may in their opinion be best adapted to carry out the original intention of the trusts of such churches or chapels, having regard to the altered circumstances of the said Irish Church, notwithstanding that other provisions may have been made for the like purposes in the said Church Building Acts, or some of them, or in the instruments governing the trusts relating to such churches or chapels respectively; but doubts have arisen whether such provisions and regulations, or any of them, can be made to apply to such churches and chapels, or any of them, or the patronage or property thereof, or to any of the districts which were at the time of the passing of the said Irish Church Act, 1869, thereto respectively assigned or annexed, or therewith respectively connected, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for the trustees or other governing body of any such church or chapel as aforesaid, by instrument under their hands, to transfer to the representative church body of the said church (with its consent) all or any part of the property vested in them for the purposes of such church or chapel, and thereupon the same shall vest in and be held by the said representative body upon the trusts for the time being applicable thereto.

2. It shall be lawful for any such trustees or other governing body as aforesaid by any unanimous resolution to put an end to any trust now or for the time being subsisting with respect to such church or chapel, and to vest the same and any other property subject to such trust in the said representative body, or any other person or persons or body corporate, and to define the future trusts thereof, either by assimilating the same to the regulations affecting other similar property in the same diocese, or in any other manner for the benefit of the said Irish Church which may be sanctioned by the chief legislative authority for the time being of the said church.

3. No such resolution shall be valid until it shall have been accepted and recorded in such manner as the said chief legislative authority may direct; and no such resolution which affects or purports to affect any right of patronage or presentation to any such church or chapel shall be so accepted or recorded without the consent in writing of the patron or patrons thereof.

4. Every such resolution when duly accepted and recorded shall be applicable to the said church or chapel and the property and affairs thereof, and shall be valid and binding to all intents and purposes, anything in the said recited Acts of Parliament, or any of them, or in the instrument forming the trusts relating to such church or chapel or property, to the contrary notwithstanding.

5. Nothing contained in this Act shall affect any power of revocation attached to any trust to which this Act applies, or prevent any person having such power, or having a right to take or resume the possession of any property affected by such trust, from exercising such power or right.

6. This Act may be cited for all purposes as the Trustee Churches (Ireland) Act, 1884.

CHAP. 11.

Freshwater Fisheries Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Fishery board may make byelaws for determining mesh of nets.*
2. *Power to form board for coarse fish district.*
3. *Powers of water-bailiffs.*
4. *Explanation of* 41 *&* 42 *Vict. c.* 39. *s.* 5.
5. *Limitations of exemptions in* 41 *&* 42 *Vict. c.* 39. *s.* 11.
6. *Short title and construction of Act.*
7. *Prohibition of the use of poison and noxious substances for destruction of fish.*
8. *Application of Acts to Norfolk and Suffolk.*
9. *Extent of Act.*

An Act for the further Protection of Fish other than Salmon in Fresh Waters. (19th May 1884.)

WHEREAS it is expedient to extend the powers of boards of conservators in fishery districts for the better protection of freshwater fish:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1.) In any fishery district subject to a board of conservators, the conservators may from time to time make byelaws for all or any of the following purposes; that is to say,

(i.) For determining the minimum size of the mesh of nets for catching freshwater fish which may be lawfully used within the district of such board, so that such mesh shall not be less than one inch from knot to knot, measured when wet, and so that no person shall be compelled to use a mesh larger than three inches from knot to knot, measured when wet; and so that such byelaw shall not extend to any casting or dip net lawfully used for catching fish for bait;

(ii.) For determining the length and size and description of nets for catching freshwater fish, which may be lawfully used within the district of such board, and the manner of using the same; and

(iii.) For prohibiting the use of any mode or instrument of fishing for freshwater fish within the district of such board, where such mode or instrument appears to be prejudicial to the fisheries;

and may by any such byelaw impose a penalty not exceeding five pounds for each offence against any such byelaw, and provide for the seizure and for the forfeiture, on summary conviction, of nets, instruments, and devices used in contravention of any such byelaw, and of fish found in the possession of a person contravening any such byelaw, and of fish caught by any such means, or in any such manner, as is contrary to any such byelaw, and such fish shall be deemed to be illegally caught, and any such forfeiture may be enforced by a court of summary jurisdiction.

Provided that no byelaw made under the authority of this section shall apply to any fixed nets for taking eels or to a landing net used as auxiliary to angling with a rod and line.

(2.) Sections thirty-nine to forty-five, both inclusive, and section sixty-two of the Salmon Fishery Act, 1873 (which sections relate to byelaws under that Act, and to the recovery, payment, and application of penalties under those byelaws), shall apply as if the said sections where herein re-enacted and in terms made applicable to byelaws under this Act and to the penalties thereby imposed.

2. Fishery districts may be formed, and conservators appointed, for water frequented by any freshwater fish, and section six of the Freshwater Fisheries Act, 1878, shall apply as if "freshwater fish" were therein substituted for "trout or char," and "salmon trout or char," and section twenty-seven of the Salmon Fishery Act, 1865, shall apply as if "freshwater fish" were therein substituted for "salmon," and any conservators so appointed shall have the powers conferred on conservators by the Salmon Fishery Act, 1876.

3. In substitution for section eight of the Freshwater Fisheries Act, 1878, which shall be repealed, it is hereby enacted that section thirty-one of the Salmon Fishery Act, 1865, and sections thirty-six, thirty-seven, and thirty-eight of the Salmon Fishery Act, 1873 (which sections relate to the powers of water bailiffs), shall extend to all waters within the limits of this Act in like manner as if those sections were re-enacted in this Act, with the substitution of "freshwater fish" for "salmon," and of "waters frequented by freshwater fish" for "salmon river," and with a reference to the Freshwater Fisheries Act, 1878, and this Act, in substitution for the reference to the Salmon Fishery Acts, 1861 to 1873, or any of them.

4. In the application of section sixty-four of the Salmon Fishery Act, 1865, to trout and char in waters within the limits of the Freshwater Fisheries Act, 1878, the words "salmon river situate in a fishery district which is subject to a board of conservators appointed under this Act" shall be construed to mean "waters frequented by trout or char."

5. Sub-heads (c.) and (d.) of sub-section three of section eleven of the Freshwater Fisheries Act, 1878, shall be read and construed as if, after the word "taking," in each of the said sub-heads, were inserted the words "in any several fishery, with the leave of the owner of such fishery, or in any public fishery, except where such taking in a public fishery is prohibited by a byelaw of any conservators."

6. This Act shall be construed as one with the Freshwater Fisheries Act, 1878, and that Act and this Act may together be cited as the Freshwater Fisheries Acts, 1878 and 1884, and this Act may be cited alone as the Freshwater Fisheries Act, 1884.

In the construction of this Act, the expression "freshwater fish" means any fish living permanently or temporarily in fresh water, exclusive of salmon.

7. Any person who unlawfully and maliciously puts any poison, lime, or noxious material in any water frequented by freshwater fish with intent thereby to destroy any of the fish that may then be or may thereafter be put therein shall be liable, on summary conviction, to a fine not exceeding twenty pounds or to imprisonment, with or without hard labour, for a term not exceeding two months.

Nothing in this section shall prevent a person being punished under any other Act, so that he be not punished twice for the same offence.

8. This Act and the Freshwater Fisheries Act, 1878, with the exception of sub-sections one, two, and three of section eleven of the latter Act, shall apply to the counties of Norfolk and Suffolk and the county of the city of Norwich, subject as follows:—

(a.) They shall apply to the waters to which the Norfolk and Suffolk Fisheries Act, 1877, applies in like manner as if those waters had been formed into a fishery district under this Act, and the conservators of the Norfolk and Suffolk Fisheries appointed under the Norfolk and Suffolk Fisheries Act, 1877, were a board of conservators appointed under this Act:

(b.) If in pursuance of this Act, and the enactments applied by this Act, one of Her Majesty's Principal Secretaries of State, on application made to him, forms all or any of the waters to which the Norfolk and Suffolk Fisheries Act, 1877, does not apply in the said counties into a fishery district, the conservators of the Norfolk and Suffolk Fisheries shall be the board of conservators for the said district, in like manner as if they were appointed in accordance with the said enactments, and such of the said enactments as relate to the mode of appointing a board of conservators shall not apply.

So much of section three of the Freshwater Fisheries Act, 1878, as relates to the counties of Norfolk and Suffolk, or the county of the city of Norwich, is hereby repealed.

9. This Act shall not extend to Scotland or Ireland.

CHAP. 12.

Public Health (Confirmation of Byelaws) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Definitions.*
3. *Confirmation of byelaws.*
4. *Saving clause.*

An Act to amend the Public Health Act, 1875, so far as relates to the Confirmation of Byelaws.

(19th May 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Health (Confirmation of Byelaws) Act, 1884, and shall be construed as one with the Public Health Act, 1875.

2. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; (that is to say,)

"Incorporated enactments" means section one hundred and twenty-eight of the Towns Improvement Clauses Act, 1847,(1) sections sixty-eight and sixty-nine of the Town Police Clauses Act, 1847,(2) and section forty-two of the Markets and Fairs Clauses Act, 1847,(3) which Acts are herein-after referred to as the incorporated Acts:

"Confirming authority" means, as regards byelaws, rules, and regulations confirmed prior to the nineteenth day of August one thousand eight hundred and seventy-one, or made under any of the incorporated enactments by reason of the incorporation thereof with any Local Act and confirmed prior to the tenth day of August one thousand eight hundred and seventy-two, one of Her Majesty's Principal Secretaries of State; and as regards other byelaws, rules, and regulations, the Local Government Board.

(1) 10 & 11 Vict. c. 34. s. 128. Byelaws as to slaughter-houses.
(2) 10 & 11 Vict. c. 89. ss. 68, 69. Byelaws as to Hackney Carriages and Public Bathing.
(3) 10 & 11 Vict. c. 14. s. 42. Byelaws as to Markets.

3. Every byelaw made or to be made under any of the incorporated enactments by reason of the incorporation thereof with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875, or any Local Act, or any Provisional Order or any Act confirming such Provisional Order, and every rule and regulation made or to be made by an urban authority under section forty-eight of the Tramways Act, 1870, shall be deemed to have required or to require the confirmation of the confirming authority, and not to have required, or to require any other confirmation, allowance, or approval.

4. This Act shall not invalidate the confirmation, allowance, or approval of any byelaw, rule, or regulation confirmed, allowed, or approved prior to the passing of this Act, nor shall this Act apply to any byelaw made or to be made under any of the incorporated enactments by reason of the incorporation thereof with any Local Act, if such byelaw has or will come into force without any confirmation, allowance, or approval, or if by the express provisions of the Local Act and without reference to the provisions with respect to confirmation, allowance, or approval of byelaws in any of the incorporated Acts, such byelaw is required to be confirmed, allowed, or approved otherwise than by the confirming authority.

CHAP. 13.

Contagious Diseases (Animals) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Power to Privy Council to prohibit landing of foreign animals in certain cases.*
2. *Extension of provisions relating to quarantine.*
3. *Amendment of 41 & 42 Vict. c. 74. Sch. V., Pt. 4.*
4. *Additional power to Privy Council.*
5. *Orders to be laid before Parliament.*
6. *Construction of Act and short title.*

An Act to amend the Contagious Diseases (Animals) Act, 1878.

(19th May 1884.)

WHEREAS it is expedient to amend the Contagious Diseases (Animals) Act, 1878, in this Act referred to as the principal Act:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. For the purpose of preventing the introduction into the United Kingdom of the infection of foot and mouth disease, the Privy Council may from time to time by general or special order prohibit, whenever they deem it expedient so to do, the landing of animals from any foreign country or countries or any specified part thereof, and they shall prohibit such landing whenever they are not satisfied with respect to any foreign country, or any specified part thereof, that having regard to the sanitary condition of the animals therein, or imported therefrom, to the laws made by such country for the regulation of the importation and exportation of animals, and for the prevention of the introduction or spreading of disease, and to the administration of such laws, the circumstances are such as to afford reasonable security against the importation therefrom of animals affected with foot and mouth disease.

2. The provisions relating to quarantine contained in Part II. of the fifth schedule annexed to the principal Act shall apply to animals brought from foreign countries from which the importation of animals is for the time being prohibited.

3. The Privy Council may, if they think fit, exercise the powers vested in them under Part IV. of the said fifth schedule, so far as relates to the admission of animals without being subject to slaughter, in relation to any specified part of a foreign country in the same manner as in relation to the whole of a foreign country, subject to such regulations as to the route by which the animals are conveyed to this country, quarantine, or otherwise as the Privy Council may from time to time by general or special order direct.

4. In addition to the powers conferred on the Privy Council by the Contagious Diseases (Animals) Act, 1878, the Privy Council may make such orders as they think fit for prohibiting the conveyance of animals by any specified vessel to or from any port in the United Kingdom for such time as they may consider expedient.

5. Any order made in pursuance of this Act shall forthwith after the making thereof, if Parliament is then sitting, and if it is not sitting then forthwith after the next meeting of Parliament, be laid before both Houses of Parliament.

6. This Act, so far as is consistent with the tenour thereof, shall be construed as one with the Contagious Diseases (Animals) Act, 1878, and shall apply to Ireland with the modifications and subject to the provisions contained in Part IV. of the principal Act, and this Act and the principal Act may be cited together as the Contagious Diseases (Animals) Acts, 1878 and 1884, and this Act may be cited separately as the Contagious Diseases (Animals) Act, 1884.

CHAP. 14.

Married Women's Property Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Husband or wife competent witness in criminal proceedings under 45 & 46 Vict. c. 75.*
2. *Short title.*

An Act to amend the sixteenth section of the Married Women's Property Act, 1882.

(23rd June 1884.)

WHEREAS by section sixteen of the Married Women's Property Act, 1882, a wife is, under the circumstances therein mentioned, declared to be liable to criminal proceedings by her husband, and a doubt has arisen as to whether the husband is admissible as a witness against his wife in such criminal proceedings, while section twelve of the same Act declares that in any proceeding under that section a husband or wife shall be competent to give evidence against each other; and it is desirable that the

said doubt should be removed, and the said Act otherwise amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In any such criminal proceeding against a husband or a wife as is authorised by the Married Women's Property Act, 1882, the husband and wife respectively shall be competent and admissible witnesses, and, except when defendant, compellable to give evidence.

2. This Act may be cited as the Married Women's Property Act, 1884, and this Act and the Married Women's Property Act, 1882, may be cited together as the Married Women's Property Acts, 1882 and 1884.

CHAP. 15.

Consolidated Fund (No. 2) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of* 6,519,368*l. out of the Consolidated Fund for the service of the year ending 31st March* 1885.
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of six million five hundred and nineteen thousand three hundred and sixty-eight pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-five.

(23rd June 1884.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-five, the sum of six million five hundred and nineteen thousand three hundred and sixty-eight pounds.

2. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of six million five hundred and nineteen thousand three hundred and sixty-eight pounds, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 2) Act, 1884.

CHAP. 16.

Bankruptcy Frauds and Disabilities (Scotland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Extension of definition of undischarged bankrupt.*
4. *Undischarged bankrupt obtaining credit to extent of 20l. to be guilty of crime and offence.*
5. *Application of Scotland of s. 32 of the Bankruptcy Act, 1883, in regard to disqualifications of bankrupt.*
6. *Application to Scotland of ss. 33 and 34 of Bankruptcy Act, 1883, in regard to bankrupt's vacating seat in House of Commons or municipal or other offices.*

An Act to apply to Scotland certain provisions of the Bankruptcy Act, 1883. (23rd June 1884.)

WHEREAS it is expedient to apply to Scotland, in manner herein-after provided, certain provisions of the Bankruptcy Act, 1883:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Bankruptcy Frauds and Disabilities (Scotland) Act, 1884.

2. This Act shall commence and come into operation from and immediately after the thirty-first day of December one thousand eight hundred and eighty-four.

3. An undischarged bankrupt shall be deemed to include a person whose estate has been sequestrated or with respect to whom a decree of cessio bonorum has been pronounced, and who has not received his discharge from a competent court in Scotland.

4. Where an undischarged bankrupt obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a crime and offence, and may be dealt with and punished as if he had been guilty of a crime and offence under the Debtors (Scotland) Act, 1880, and the provisions of that Act shall apply to proceedings under this section.

5. In the application of section thirty-two of the Bankruptcy Act, 1883, to Scotland the following provisions shall have effect:

(1.) The expression "adjudged bankrupt" shall include the case of a person whose estate has been sequestrated or with respect to whom a decree of cessio bonorum has been pronounced by a competent court in Scotland.

(2.) A person adjudged bankrupt shall be disqualified from being elected to or holding or exercising the office of provost, bailie, treasurer, dean of guild, deacon-convener of trades or councillor, or commissioner or magistrate of police, or being elected to or holding or exercising the office of member of a parochial board or school board, or road trustee, or member of any local authority under any Act for the time being in force (whether passed before or after the commencement of this Act) relating to local government in Scotland.

(3.) The disqualifications to which a person adjudged bankrupt is subject under the said section as amended by this Act shall be removed and cease if and when—

(*a.*) the sequestration of his estate is recalled or reduced, or the decree of cessio bonorum with respect to him is recalled or reduced; or

(*b.*) he obtains his discharge from a competent court.

6. Sections thirty-three and thirty-four of the Bankruptcy Act, 1883, shall apply to Scotland, subject to the following provisions:

(1.) In each of the said sections the expression "adjudged bankrupt" shall have the meaning assigned to it in the immediately preceding section of this Act.

(2.) In the said section thirty-three the expression "order" shall include "deliverance or decree," and the expression "court" shall include the court in Scotland pronouncing the deliverance or decree.

(3.) The said section thirty-four shall be deemed to apply to any person whilst holding the office of provost, bailie, treasurer, dean of guild, deacon-convener of trades or councillor, or commissioner or magistrate of police, or member of a parochial board or school board, or road trustee, or member of any local authority under any Act for the time being in force (whether passed before or after the commencement of this Act) relating to local government in Scotland.

CHAP. 17.

Metropolitan Police Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Appointment of additional assistant commissioner.*
3. *Amendment of* 31 *&* 32 *Vict. c.* 67. *s.* 3, *and* 38 *&* 39 *Vict. c.* 28.
SCHEDULE.

An Act to provide for the appointment of an additional Assistant Commissioner of Police of the Metropolis and for other purposes relating to the Commissioner and Assistant Commissioners of such Police.

(23rd June 1884.)

WHEREAS by the Metropolitan Police Act, 1856, and the Police Rate Act, 1868, power is given to Her Majesty to appoint two assistant commissioners of the police of the Metropolis, and provision is made respecting the salaries and allowances of such assistant commissioners, and it is expedient to authorise the appointment of a third assistant commissioner:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Metropolitan Police Act, 1884.

The Acts in the schedule to this Act may be cited by the short titles mentioned in that behalf in the third column of that schedule.

This Act together with the Acts in the schedule to this Act may be cited as the Metropolitan Police Acts, 1829 to 1884.

2. It shall be lawful for Her Majesty to appoint a fit person to be a third assistant commissioner of police of the metropolis, and the Metropolitan Police Act, 1856, and the Police Rate Act, 1868, shall apply in like manner as if three assistant commissioners of police of the metropolis were therein mentioned instead of two.

Provided that the salary and allowances of the assistant commissioner appointed in pursuance of this Act shall be paid as part of the expenses of the Metropolitan Police.

3. (1.) Section three of the Police Rate Act, 1868, with respect to the allowances to an assistant commissioner of police shall apply as if the commissioner of police of the metropolis were therein mentioned as well as the assistant commissioners.

(2.) The Metropolitan Police Staff (Superannuation) Act, 1875, shall apply to the commissioner and assistant commissioners of the Metropolitan Police so far as respects any salary, remuneration, or emolument received or enjoyed by any of them out of the expenses of the Metropolitan Police Force.

SCHEDULE.

Session and Chapter.	Title.	Short Title.
10 Geo. c. 44 - -	An Act for improving the police in and near the metropolis.	The Metropolitan Police Act, 1829.
2 & 3 Vict. c. 47 -	An Act for further improving the police in and near the Metropolis.	The Metropolitan Police Act, 1839.
19 & 20 Vict. c. 2 -	An Act to amend the Acts relating to the Metropolitan Police.	The Metropolitan Police Act, 1856.
20 & 21 Vict. c. 64 -	An Act for raising a sum of money for building and improving stations of the Metropolitan Police and to amend the Acts concerning the Metropolitan Police.	The Metropolitan Police Act, 1857.
24 & 25 Vict. c. 124 -	An Act for amending the law relating to the receiver for the Metropolitan Police district and for other purposes.	The Metropolitan Police Act, 1861.
31 & 32 Vict. c. 67 -	An Act to amend the law relating to the funds provided for defraying the expenses of the Metropolitan Police.	The Police Rate Act, 1868.
38 & 39 Vict. c. 28 -	An Act to amend the law respecting the superannuation allowances of certain officers of the staff of the Metropolitan Police.	The Metropolitan Police Staff (Superannuation) Act, 1875.

CHAP. 18.

Settled Land Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation.*
3. *Construction of Act.*
4. *Fine on a lease to be capital money.*
5. *Notice under 45 & 46 Vict. c. 38. s. 45. may, as to a sale, exchange, partition, or lease, be general.*
6. *As to consents of tenants for life.*
7. *Powers given by s. 63 to be exercised only with leave of the Court.*
8. *Curtesy to be deemed to arise under settlement.*

An Act to amend the Settled Land Act, 1882. (3rd July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Settled Land Act, 1884.

2. The expression "the Act of 1882" used in this Act means the Settled Land Act, 1882.

3. The Act of 1882 and this Act are to be read and construed together as one Act, and expressions used in this Act are to have the same meanings as those attached by the Act of 1882 to similar expressions used therein.

4. A fine received on the grant of a lease

under any power conferred by the Act of 1882 is to be deemed capital money arising under that Act.

5. (1.) The notice required by section forty-five of the Act of 1882 of intention to make a sale, exchange, partition, or lease may be notice of a general intention in that behalf.

(2.) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, partitions, or leases effected, or in progress, or immediately intended.

(3.) Any trustee, by writing under his hand, may waive notice either in any particular case, or generally, and may accept less than one month's notice.

(4.) This section applies to a notice given before, as well as to a notice given after, the passing of this Act.

(5.) Provided that a notice, to the sufficiency of which objection has been taken before the passing of this Act, is not made sufficient by virtue of this Act.

6. (1.) In the case of a settlement within the meaning of section sixty-three of the Act of 1882, any consent not required by the terms of the settlement is not by force of anything contained in that Act to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement.

(2.) In the case of every other settlement, not within the meaning of section sixty-three of the Act of 1882, where two or more persons together constitute the tenant for life for the purposes of that Act, then, notwithstanding anything contained in subsection (2) of section fifty-six of that Act, requiring the consent of all those persons, the consent of one only of those persons is by force of that section to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exercisable for any purpose provided for in that Act.

(3.) This section applies to dealings before, as well as after, the passing of this Act.

7. With respect to the powers conferred by section sixty-three of the Act of 1882, the following provisions are to have effect:—

(i.) Those powers are not to be exercised without the leave of the Court.

(ii.) The Court may by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given.

(iii.) The Court may from time to time rescind, or vary, any order made under this section, or may make any new or further order.

(iv.) So long as an order under this section is in force, neither the trustees of the settlement, nor any person other than a person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave is by the order given, to exercise a power conferred by the Act of 1882.

(v.) An order under this section may be registered and re-registered, as a lis pendens, against the trustees of the settlement named in the order, describing them on the register as "Trustees for the purposes of the Settled Land Act, 1882."

(vi.) Any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until the order is duly registered, and when necessary re-registered as a lis pendens.

(vii.) An application to the Court under this section may be made by the tenant for life, or by the persons who together constitute the tenant for life, within the meaning of section sixty-three of the Act of 1882.

(viii.) An application to rescind or vary an order, or to make any new or further order under this section, may be made also by the trustees of the settlement, or by any person beneficially interested under the settlement.

(ix.) The person or persons to whom leave is given by an order under this section, shall be deemed the proper person or persons to exercise the powers conferred by section sixty-three of the Act of 1882, and shall have, and may exercise those powers accordingly.

(x.) This section is not to affect any dealing which has taken place before the passing of this Act, under any trust or power to which this section applies.

8. For the purposes of the Act of 1882 the estate of a tenant by the curtesy is to be deemed an estate arising under a settlement made by his wife.

CHAP. 19.

Summary Jurisdiction over Children (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extension of Act.*
3. *Commencement of Act.*
4. *Summary trial of children for indictable offences unless objected to by parent or guardian.*
5. *Summary trial with consent of young persons.*
6. *Restriction on punishment of child for summary offence.*
7. *Power of court to discharge accused children and young persons without punishment.*
8. *Appeals and form of conviction.*
9. *Definitions for purposes of the Act.*
SCHEDULE.

An Act to amend the Summary Jurisdiction (Ireland) Acts so far as they relate to Children and young Persons. (3rd July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Summary Jurisdiction over Children (Ireland) Act, 1884.

2. This Act shall extend to Ireland only.

3. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-five.

4. (1.) Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment:

Provided that—

(*a.*) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor; and

(*b.*) Where imprisonment is awarded the term shall not in any case exceed one month; and

(*c.*) Where a fine is awarded the amount shall not in any case exceed forty shillings; and

(*d.*) When the child is a male the court may, instead of any other punishment, adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

(2.) For the purpose of a proceeding under this section, the court of summary jurisdiction, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, "and object to the case being dealt with sum- "marily?" with a statement, if the court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the child will be tried if tried by a jury.

(3.) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a court of summary jurisdiction, the court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view, so far as is practicable, of securing his attendance at the hearing of the charge, or the court may, if they think it

expedient so to do, deal with the case summarily.

(4.) This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

(5.) This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is charged, above the age of seven years and of sufficient capacity to commit crime.

5. (1.) Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the schedule to this Act, the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the young person charged with the offence, when informed by the court of his right to be tried by jury, consents to be dealt with summarily, may deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding ten pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months; and if the young person is a male, and, in the opinion of the court, under the age of fourteen years, the court, if they think it expedient so to do, may, either in substitution for or in addition to any other punishment under this Act, adjudge such young person to be, as soon as practicable, privately whipped with not more than twelve strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of such young person.

(2.) For the purpose of a proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read t the young person charged, and then address a question to him to the following effect: "Do "you desire to be tried by a jury, or do you "consent to the case being dealt with sum- "marily?" with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

(3.) This section shall not prejudice the right of a court of summary jurisdiction to send a young person to a reformatory or an industrial school.

6. A child on summary conviction for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, shall not be imprisoned for a longer period than one month nor fined a larger sum than forty shillings.

7. If upon the hearing of a charge against children and young persons for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, the court of summary jurisdiction think that, though the charge is proved, the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,—

(1.) The court, without proceeding to conviction, may dismiss the information, and, if the court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the court think reasonable; or,

(2.) The court upon convicting the person charged may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court think reasonable.

8. (*a.*) The enactments in force in the Dublin Metropolitan Police District relative to appeals in cases of summary jurisdiction, and the enactments of the Petty Sessions (Ireland) Act, 1851, relative to appeals in the like cases, shall respectively extend to cases heard and determined in such district, and elsewhere in Ireland, under this Act.

(*b.*) Every conviction under this Act shall contain a statement, in the case of a child, as to the consent or otherwise of his parent or guardian, and, in the case of a young person, of the consent of such young person, to be tried by a court of summary jurisdiction.

9. In this Act the following expressions have the meanings herein-after respectively assigned to them; that is to say,

The expression "child" means a person who in the opinion of the court before whom he is brought is under the age of twelve years:

The expression "young person" means a person who in the opinion of the court before whom he is brought is of the age of twelve years and under the age of sixteen years:

The expression "guardian," in relation to a child or young person, includes any person who, in the opinion of the court having cognizance of any case in which a child or young person is concerned, has for the time being the charge of or control over such child or young person:

The expression "court of summary jurisdiction" shall, in the police district of Dublin metropolis, mean a court constituted of a divisional justice acting for the said district, and elsewhere in Ireland shall mean a court constituted of one or more justices of the peace sitting in petty sessions.

SCHEDULE.

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.

Young Persons consenting.

1. Simple larceny.
2. Offences declared by any Act for the time being in force to be punishable as simple larceny.
3. Larceny from or stealing from the person.
4. Larceny as a clerk or servant.
5. Embezzlement by a clerk or servant.
6. Receiving stolen goods.
7. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared by any Act for the time being in force to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant.
8. Attempt to commit simple larceny, or an offence declared by any Act for the time being in force to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.

This Act shall apply to any of the following offences when alleged to have been committed by a young person in like manner as if such offence were included in the schedule; that is to say,

(1.) To any offence in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend "the statute law of England and Ireland "relating to offences against the person"; and

(2.) To any offence relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend "the statute law of England and Ireland "relating to malicious injuries to pro-"perty"; and

(3.) To any indictable offence, either under the Post Office Laws or prosecuted by Her Majesty's Postmaster-General; and for the purpose of this provision the expression "Post Office Laws" has the same meaning as it has in the Act of the session of the seventh year of the reign of King William the Fourth and the first year of the reign of Her present Majesty, chapter thirty-six, intituled "An Act for consoli-"dating the laws relative to offences "against the Post Office of the United "Kingdom, and for regulating the judi-"cial administration of the Post Office "Laws, and for explaining certain terms "and expressions employed in those "laws," and the Acts amending the same.

CHAP. 20.

Greek Marriages Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Certain marriages at chapels in Finsbury Circus and London Wall, or at residence of members of Greek Church, to be valid.*
2. *Saving for status and right to property dependent on invalidity of marriage.*
3. *Certificates of marriages to be transmitted to Probate and Matrimonial Registry.*
4. *Short title.*

An Act to remove Doubts as to the Validity of certain Marriages of Members of the Greek Church in England. (3rd July 1884.)

WHEREAS it is alleged that certain marriages have been from time to time, between the years one thousand eight hundred and thirty-six and one thousand eight hundred and fifty-seven, solemnized between members of the Greek Church in the Greek Chapel then situate at 9, Finsbury Circus, in the City of London, and afterwards, within the said period, at London Wall, in the said City:

And that similar marriages have been from time to time, within the said period, solemnized at the residences of members of the said Church:

And that such marriages were respectively solemnized in conformity with the rights and ceremonies of the Greek Church by a priest of that Church, and entries of the said respective marriages so solemnized have from time to time been made in the register book kept for that purpose at the said chapels respectively, or otherwise, in the custody of the said priest:

And that the said marriages were respectively solemnized in the belief that the aforesaid conformity to and compliance with the rites and ceremonies of the Greek Church constituted a compliance with the law of England:

And whereas objections may be made to the validity of such marriages, by reason of the same not having been solemnized in any consecrated or licensed church or chapel of the Church of England, or in any registered building, or at the office of the Registrar, and not having been solemnized after due publication of banns, or under licence or special licence, or in the presence of a Clerk in Holy Orders of the Church of England, or a Registrar of marriages, and it is expedient to confirm, in the manner and subject to the proviso herein-after mentioned, any marriage which may have been contracted in the manner and under the circumstances aforesaid, notwithstanding all or any of the aforesaid defects:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Any party to any such marriage as aforesaid, and any child or grandchild of any such party, and any person interested in the validity of any such marriage, may respectively apply to the Probate and Matrimonial Division of Her Majesty's High Court of Justice by petition, praying the Court for a decree declaring that such marriage was a valid marriage; and the said Court shall have jurisdiction to hear and determine such application, and shall, if an entry of such marriage shall appear to have been duly made upon the register book aforesaid, and if the Court be satisfied that such marriage was solemnized in the manner and in the belief aforesaid, and was in all other respects good and lawful, declare the same to have been a valid marriage, notwithstanding all or any of the defects aforesaid: Provided always, that this Act shall not extend to render valid any marriage which before the passing thereof has been declared invalid by any court of competent jurisdiction in any proceeding touching such marriage, or any right dependent on the validity or invalidity thereof, or any marriage where either of the parties thereto has afterwards during the life of the other intermarried with any other person.

Any petition under this Act shall be accompanied by such affidavit verifying the same as the said Court may from time to time direct.

In respect of all matters and things by this Act not specially provided for, the provisions of sections five, six, and seven of the Act 21 and 22 Vict. c. 93. shall mutatis mutandis apply, and all proceedings under this Act shall be had and taken in conformity therewith, and with such of the rules for the time being in force with reference to applications to the Court under the said Act as may be applicable, or with such rules as the Judges of the said Court for the time being authorised to make rules may from time to time prescribe.

2. Provided always, and be it further enacted, that the status of any person or any right of any person to any real or personal property or any estate or interest of any such person in any real or personal property which may be dependent on the invalidity of any such marriage shall not be altered, taken away, or injuriously affected by any decree made under the provisions of this Act; but shall be and remain as valid and effectual in law to all intents and purposes as if this Act had not been passed.

3. The priest of the Greek Church, or other the person in whose custody the register books relating to such marriages as aforesaid shall be kept, on the passing of this Act, shall forthwith transmit to the Registrar of the Probate and Matrimonial Registry a copy signed by him of the register aforesaid, and the said Registrar shall receive and preserve the same in the said Registry.

4. This Act may be cited as the Greek Marriages Act, 1884.

CHAP. 21.

Sea and Coast Fisheries Fund (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Transfer of property to the Commissioners of Public Works in Ireland.*
3. *Application of funds by Commissioners.*
4. *Certain provisions of 37 & 38 Vict. c. 86. and 45 Vict. c. 16. incorporated.*
5. *Compensation for loss of employment.*

An Act to provide for the better administration of the Fund under the control of the Trustees to aid the Sea and Coast Fisheries of Ireland; and for other purposes in relation thereto.

(3rd July 1884.)

WHEREAS certain moneys, which are in this Act referred to as the Sea and Coast Fisheries Fund, being the residue of a larger sum collected by public subscription for the relief of distress in Ireland in the year one thousand eight hundred and twenty-two, are now vested in trustees known as the Trustees to aid Sea and Coast Fisheries of Ireland, and are held by such trustees upon trust to apply the same for promoting and encouraging the Coast Fisheries in Ireland:

And whereas it is expedient for the more efficient and economic administration of the said fund that it should be transferred to the Commissioners of Public Works in Ireland, and the said Commissioners have, with the consent of the Commissioners of Her Majesty's Treasury, agreed to such transfer, and it is expedient that the said transfer should be carried into effect:

And whereas under the Irish Reproductive Loan Fund Act, 1874, the Irish Reproductive Loan Fund is held by the Commissioners of Public Works in Ireland upon trust, to dispose of the same by way of loan for the purposes of the said Act, and is appropriated among the counties enumerated in the schedule to the said Act in the proportions specified in that schedule:

And whereas certain of the said counties in the said schedule abut upon the sea, and others do not:

And whereas the purposes of the said Irish Reproductive Loan Fund Act, 1874, include, in the case of the counties so abutting on the sea, certain purposes, in the said Act referred to as fishery purposes, and such fishery purposes, or some of them, are similar to those provided for by the trust of the said Sea and Coast Fisheries Fund:

And whereas the counties so abutting on the sea as aforesaid for which provision has been made by the said Reproductive Loan Fund Act, 1874, are herein-after referred to as the endowed counties:

And whereas it is expedient that the Commissioners of Public Works in Ireland should have power to administer the said Sea and Coast Fisheries Fund, when transferred to them, by way of loan for such fishery purposes as are referred to in the Irish Reproductive Loan Fund Act, 1874, in all or any of the counties of Ireland which abut upon the sea (in this Act referred to as "the maritime counties"), but that the said Commissioners should nevertheless in so administering the said fund have regard to the benefits conferred on the endowed counties by the Irish Reproductive Loan Fund, and should, so far as is consistent with justice, to the extent of such benefits give a preference to the maritime counties which are not so endowed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Sea and Coast Fisheries Fund (Ireland) Act, 1884.

2. All property of every description, including all interests and rights in, to, and out of property, and including obligations and things in action, which may form part of the Sea and Coast Fisheries Fund, or may be vested in or under the control of the Trustees to aid Sea and Coast Fisheries of Ireland, or any of them as such trustees, or in or under the control of any other person whatsoever, as part or on account of the said fund, shall from and after the passing of this Act pass to and vest in the Commissioners of Public Works in Ireland (in

this Act referred to as the Commissioners), subject to all debts and liabilities affecting the same, and immediately after the passing of this Act the said trustees shall transfer to the Commissioners all books, securities, papers, documents, and other property of every description held or possessed by them.

The Commissioners may enforce in their own name, or in the name of their secretary for the time being, or any such other person as they may direct, any remedies for the recovery of any portion of the said fund which if this Act had not passed might have been enforced by the said trustees, or any of them, or any person on their behalf, and any sums of money due to the trustees at the time of the passing of this Act shall be considered as due to the Commissioners, and may be sued for and recovered by the Commissioners in the same manner as if such moneys had been lent by them and not by the trustees.

All moneys, stocks, and securities standing in the books of the Bank of Ireland in the name of the said trustees or any of them or any other person on account of the said fund shall be entered in or transferred to the name of the Commissioners, and the Governor and Company of the Bank of Ireland are hereby authorised and required to make such entry or transfer.

3. The Commissioners shall hold the Sea and Coast Fisheries Fund hereby transferred to them upon trust to dispose thereof for the benefit of the maritime counties, care being taken, so far as is practicable, to do equal justice between the said counties; and for the purpose of so doing justice it shall be the duty of the Commissioners in applying the Sea and Coast Fisheries Fund to give a preference to the maritime counties which are not endowed over the endowed counties to the extent of such endowment; and further it shall be the duty of the Commissioners in applying the said Sea and Coast Fisheries Fund to the endowed counties to give a preference as between such counties to those counties which have a less endowment over those which have a greater endowment to the extent of the difference between such endowments.

4. There shall be incorporated with this Act:

(1.) The following provisions of the Irish Reproductive Loan Fund Act, 1874; that is to say,

(*a.*) So much of section five as relates to the interest to be charged in respect of loans, and to the persons to whom and the security upon which loans for fishery purposes are to be made, and to the mode of testifying the recommendation of the Inspectors of Irish Fisheries relating to any such loan; and

(*b.*) Section six, relating to the recovery of loans, including any costs and charges incurred in respect of such loans; and

(*c.*) Section seven, relating to the investment of moneys in the hands of the Commissioners and not employed by them in loans; and

(*d.*) Section eight, relating to a certificate stating the amount due to the Commissioners from any person in respect of a loan made to him, together with interest thereon; and

(*e.*) Section nine, relating to the recovery of a loan and of all moneys due to the Commissioners in respect thereof in case the Commissioners are satisfied that the borrower is not carrying into effect the undertaking for which the loan was made; and

(*f.*) Section ten, relating to the making, rescinding, annulling, and adding to rules by the Lord Lieutenant in Council, and to the validity of such rules, and to the judicial notice thereof, and the duty of the Commissioners and of the inspectors of fisheries to conform thereto; and

(*g.*) Section twelve, relating to the rendering of accounts, and to the submission of such accounts, or a summary thereof, to Parliament; and

(2.) The following provisions of the Irish Reproductive Loan Fund Amendment Act, 1882; that is to say,

(*a.*) Section three, relating to the supply of boats or fishing gear in lieu of money to persons obtaining loans; and

(*b.*) Section four, relating to the recovery of moneys due to the Commissioners on account of loans; and

(*c.*) Section five, relating to a certificate stating the amount due to the Commissioners from any person in respect of a loan, together with interest thereon, and any costs and charges in respect of such loan or the recovery thereof;

so far as the said sections are applicable to and not inconsistent with any of the provisions of this Act; and, for the purposes of such incorporation, the said sections shall be construed as if all references therein to the said Acts, or either of them, were references to this

Act, and the loans therein referred to were loans under this Act.

5. The Commissioners may pay out of the fund hereby transferred to them a sum of five hundred pounds to the secretary of the trustees as compensation for the determination of his employment as such secretary.

CHAP. 22.

Loans for Schools and Training Colleges (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Loans for national schools and training colleges.*
3. *Insurance of houses for which loans have been made.*
4. *Provisions of Land Improvement Acts to apply to loans under this Act.*
5. *Interpretation.*

An Act to amend the Law relating to the Buildings of Non-vested National Schools and Training Colleges in Ireland. (3rd July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Loans for Schools and Training Colleges (Ireland) Act, 1884.

2. In addition to the purposes for which loans may be made under the Landed Property Improvement (Ireland) Acts, the Commissioners of Public Works in Ireland may, in such cases as they may judge expedient, subject to such rules as may from time to time be made by the Commissioners of Her Majesty's Treasury, make loans for the purpose of assisting any person in the erection, enlargement, structural improvement, or purchase of a house to be used as a non-vested national school or training college, or in the enlargement or structural improvement of any existing non-vested national school or training college, or in the acquisition or improvement of a farm, not exceeding twenty-five acres in extent, connected with a non-vested national school or training college, to be used for the purpose of agricultural instruction, or for the purpose of discharging any debt due and incurred before the nineteenth day of May one thousand eight hundred and eighty-four in the erection, enlargement, structural improvement, or purchase of a house to be used as a training college.

Such loans shall only be made on the recommendation of the Commissioners of National Education in Ireland.

3. When any loan is made under this Act, the Commissioners of Public Works may from time to time, if they think fit, insure against damage by fire all buildings charged with the repayment of such loan, in such insurance office, and for such sum as the Commissioners think fit; and all premiums paid on account of such insurance shall be deemed to be included in every charge and security whereby the repayment of such loan is secured, and shall be forthwith recoverable in like manner as any instalment of the rentcharge payable in respect of such loan.

4. Loans under this Act shall be repaid by the payment to Her Majesty of an annual rentcharge at the rate of five pounds for every hundred pounds advanced on account thereof, and so in proportion for any less amount, and such rentcharge shall be payable for the term of thirty-five years, and all lands on which any house or building may stand which is erected, enlarged, improved, or purchased wholly or partly by means of a loan under this Act, and any such house or building, and any other land acquired or improved wholly or partly by means of a loan under this Act, shall be charged with the payment of such loan; and, so far as is consistent with this Act, all the provisions of the Landed Property Improvement (Ireland) Acts relating to loans, and the priority, repayment, and recovery thereof and otherwise, shall apply to loans made under this Act and the priority, repayment, and recovery of such loans and otherwise in relation thereto, and the said Acts and

this Act shall be read together and construed as one, save so far as this Act may be inconsistent with those Acts, or any of them.

The Commissioners of Public Works may further, if they think fit, for the purpose of securing the repayment of a loan under this Act, take the security of at least three persons, of whose sufficiency and solvency the said Commissioners are satisfied, such security to be subject to such conditions as the said Commissioners think proper.

5. In this Act the term "Landed Property "Improvement (Ireland) Acts" means the Act of the session of the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-two, intituled "An Act to facili- "tate the Improvement of Landed Property "in Ireland," and any Acts amending or extending the same; and the term "non-vested "national school" has the same meaning as in the National School Teachers Residences (Ireland) Act, 1875.

CHAP. 23.

National Debt (Conversion of Stock) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Creation of new* 2¾ *per cent. stock, and of additional* 2½ *per cent. stock.*
2. *Exchange of* 3 *per cent. stock into* 2¾ *per cent. or* 2½ *per cent. stock.*
3. *Adjustment of accounts as to net saving from exchange under Bill.*
4. *Provision as to increase of charge arising from earlier payment of dividends.*
5. *Adaptation of* 43 *&* 44 *Vict. c.* 36. *ss.* 3 *and* 4 *to* 2¾ *and* 2½ *per cent. stock.*
6. *Power of court, trustees, &c. in relation to exchange of stock.*
7. *Supplemental provisions.*
8. *Remuneration to Banks of England and Ireland.*
9. *Definitions.*
10. *Short title of Act.*

An Act for giving Facilities for the Conversion of Three Per Cent. Stock into Stock of a Lower Denomination, and for other purposes relating thereto.

(3rd July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1.) Subject to the limitation in this Act mentioned, the Treasury may at any time and from time to time within two years after the passing of this Act, by warrant addressed to the Bank, direct—

(*a*) that stock shall be created, consisting of perpetual annuities yielding dividends at the rate of two pounds fifteen shillings per cent. per annum, which stock may be called two and three-quarters per cent. stock; and

(*b*) that an additional amount of two and a half per cent. stock shall be created;

or give either of such directions: Provided that the amount of stock so directed to be created shall not be more than the Treasury, on the recommendation of the National Debt Commissioners, from time to time deem sufficient for the purpose of exchange under this Act.

(2.) The two and three-quarters per cent. stock, and two and a half per cent. stock, shall not be redeemable until the fifth day of January one thousand nine hundred and five, but on and after such day shall be redeemable by Parliament after not less than one month's notice at the rate of one hundred pounds sterling for every hundred pounds of the capital sums in respect of which the annuities are payable, together with the payment of all arrears of such annuities, including a proportionate part accrued since the last date for the payment of dividends.

(3.) Such notice shall be a resolution of the House of Commons signified by the Speaker in writing and printed in the London Gazette; and the portion of stock redeemed at one time shall not be less, in the case of two and three-quarters per cent. stock, than five million pounds capital stock, and in the case of two and a half per cent. stock, than fourteen million pounds capital stock; but subject as

aforesaid, the mode of redemption shall be determined by an Act to be hereafter passed.

(4.) The two and three-quarters per cent. stock of annuities shall form part of the National Debt, and shall be payable by equal quarterly dividends on the fifth day of January, the fifth day of April, the fifth day of July, and the fifth day of October in every year.

(5.) The annuities created in pursuance of this Act shall be charged on the Consolidated Fund of the United Kingdom, and paid out of the permanent annual charge of the National Debt, and the provisions of the National Debt Act, 1870, shall apply in the same manner, so far as may be consistently with the tenour of this Act, as if the stocks of annuities created in pursuance of this Act were part of the stocks of perpetual annuities described in the First Schedule to the National Debt Act, 1870; and the two and a half per cent. stock created under this Act shall be consolidated with the two and a half per cent. stock mentioned in the said Schedule; and the Treasury may by warrant declare that the two and three-quarters per cent. stock shall be subject to Part Five of the said Act.

2.—(1.) The Treasury may make arrangements whereby three per cent. stock may be exchanged for either two and three-quarters per cent. stock, or for two and a half per cent. stock, at a rate not exceeding one hundred and two pounds of two and three-quarters per cent. stock, or one hundred and eight pounds of two and a half per cent. stock for every hundred pounds of three per cent. stock, and so in proportion for any greater or less sum than one hundred pounds.

(2.) For the purpose of effecting such exchange the Bank shall cancel in their books as from the date of the exchange the amount to be exchanged of three per cent. stock standing in the name of the person making the exchange, and shall inscribe in their books in the name of such person the amount of two and three-quarters per cent. stock, or of two and a half per cent. stock (as the case may be), to be given in exchange for the three per cent. stock so cancelled.

3.—(1.) At the expiration of each of such periods as the Treasury from time to time fix, not exceeding twelve months, an account shall be taken of the pecuniary results of the operations under this Act during that period; and if during that period there has been by reason of such operations an increase in the nominal capital amount of the national debt, the Treasury shall forthwith create in the names of the National Debt Commissioners terminable annuities of such amount as, if based on a rate of interest of two and a half per cent. per annum, will within a period not exceeding fifty years from the date of creation, extinguish the amount of the said increase; and such annuities shall be charged on the consolidated fund and paid out of the permanent annual charge of the national debt, and shall be applied by the National Debt Commissioners, in like manner as if the same were part of the new sinking fund.

(2.) If the said account shows with respect to the said period, that any such diminution in the annual charge for the dividends of the national debt as has arisen from the operations under this Act, exceeds the annual amount of the terminable annuities created under this section, the amount of such excess shall be deemed to be the net saving from the operations of this Act, and the permanent annual charge of the national debt shall be reduced by the amount of such saving.

(3.) The Treasury may from time to time redeem out of the Consolidated Fund or the growing produce thereof, all or any part of the terminable annuities created in pursuance of this section, and the permanent annual charge of the National Debt shall be reduced by the amount of the terminable annuities so redeemed.

4.—(1.) Where by reason of any exchange of stock in pursuance of this Act an increase of charge for the annual dividends of the National Debt arises in one financial year ending on the thirty-first day of March, and the amount of such increase would but for such exchange have been a charge in the next financial year, the Treasury may borrow all or so much as they think fit of the amount of such increase, and may borrow the same by means of terminable annuities of such amount as will pay off the loan within a period not exceeding twenty years, and such annuities shall be charged on the Consolidated Fund and shall be paid out of the permanent annual charge of the National Debt.

(2.) The Treasury may from time to time redeem out of the Consolidated Fund or the growing produce thereof the said annuities or any part thereof, and the permanent annual charge of the National Debt shall be reduced by the amount of any annuities so redeemed.

5. Regulations made in pursuance of the Savings Banks Act, 1880, with respect to investments in and sales of stock through the medium of trustee and post office savings banks may provide for investments in two and three-quarters per cent. stock and in two and a half per cent. stock, or in either of such stocks, and may provide for any depositor

credited with any three per cent. stock, in pursuance of the said Act, exchanging such stock for two and three-quarters per cent. stock, and two and a half per cent. stock, or either of such stocks, in manner provided by the said regulations; and for the purpose of regulations made in pursuance of this section, the expression "Government stock" in the Savings Banks Act, 1880, shall be deemed to include two and three-quarters per cent. stock and two and a half per cent. stock.

6.—(1.) Where any three per cent. stock is standing in the name of any of the following officers, namely,—

(*a.*) Her Majesty's Paymaster General, on behalf of the High Court of Justice in England; or

(*b.*) the Accountant to the Court of Session in Scotland; or

(*c.*) the Accountant General of the consolidated accounting office of the High Court of Justice in Ireland;

the Treasury, with the approval, in the case of England, of the Lord Chancellor, and in the case of Scotland, of the Lord Advocate, and in the case of Ireland, of the Lord Chancellor of Ireland, may make regulations as to the mode in which such stock may, with the consent of the person to whom the dividends on such stock are for the time being payable, or, if any other person is entitled to or interested in the stock, or the dividends are being accumulated, then with the consent, in the case of England or Ireland, of the judge of the High Court of Justice to whose court the cause or matter to the credit of which the stock is standing is attached, or where the cause or matter is not so attached, then with the consent of any judge of the said Court, and with the consent, in the case of Scotland, of the Court of Session, be exchanged for two and three-quarters per cent. stock or two and a half per cent. stock in manner provided by this Act.

(2.) Where the person to whom such dividends are payable receives the same as trustee, committee of a lunatic, guardian of an infant, or otherwise in a fiduciary character, he may, subject to any provision of the aforesaid arrangements, give the aforesaid consent.

(3.) Where any three per cent. stock is standing in the name of the official trustees of charitable funds, an exchange in pursuance of this Act shall not be made except on the request or with the consent of the trustees or persons acting in the administration of the charity to which such stock belongs.

(4.) Where any three per cent. stock is standing in the name of any person other than the officers above mentioned, such person (in this section referred to as the holder) may exchange such stock or any part thereof for two and three-quarters per cent. stock or two and a half per cent. stock in manner provided by this Act; provided that where the consent of any person other than the holder is required for a change of investment by such holder, such consent shall be required for the purpose of an exchange in pursuance of this section; and where the holder is a trustee, and has not power under the terms of his trust to vary investments, the consent either of every person interested in the stock, or of a judge of the High Court of Justice in England and Ireland, or in Scotland of a judge of the Court of Session, shall be required for the purpose of an exchange in pursuance of this section; but otherwise holders shall not be liable for any loss resulting from any exchange in pursuance of this section. Subject to rules of court, any jurisdiction given by this Act to a judge of the High Court of Justice shall be exercised by a judge of the Chancery Division.

(5.) The Bank shall not be required to inquire as to whether any such consent as aforesaid is given to any exchange, nor be responsible in the event of any consent not having been given.

(6.) A power, whether subject or not to any restrictions or conditions, to invest in three per cent. stock shall extend to authorise an investment, subject to the same conditions and restrictions (if any) in two and three-quarters per cent. stock and in two and a half per cent. stock, or either of such stocks.

7.—(1.) Where stock is exchanged under this Act, the stock taken in exchange and the dividends thereon shall be subject to the same trusts, charges, rights, distringas, and restraints as affect the stock cancelled on the exchange and the dividends thereon respectively, and all powers of attorney, requests as to dividends, and other documents relating to the cancelled stock and the dividends thereon, or either of them, shall apply to the stock taken in exchange and the dividends thereon respectively.

(2.) The arrangements made by the Treasury for the exchange of stock under this Act may provide for the manner in which any request for or assent to such exchange is to be made or given, and as to the evidence of title, unsoundness of mind, infancy, or other matter which the Bank may require, and in the case of a stockholder who is of unsound mind, or an infant, or otherwise under disability, may provide for the request or assent being made or given by the committee, guardian, or other person on behalf of such stockholder, and where one or more of the holders of stock on a joint account is or are of unsound mind, an

infant, infants, or under disability, or is or are beyond the seas, may also provide for dispensing with the request or assent of such holder or holders.

(3.) A warrant from the Treasury shall be a sufficient authority to the Bank for anything done by the Bank in pursuance of such authority for the purposes of this Act.

8. There shall be paid to the Banks of England and Ireland respectively out of the Consolidated Fund, on account of any additional trouble, expense, and responsibility which may be imposed on them by this Act, in addition to the remuneration otherwise payable to them in respect of the management of the National Debt, such remuneration as the Treasury and they agree on.

9. In this Act—

"The Treasury" means the Commissioners of Her Majesty's Treasury.

"The Lord Chancellor" means the Lord High Chancellor of Great Britain, and includes the Lord Keeper or Commissioners of the Great Seal of the United Kingdom.

"The Lord Chancellor of Ireland" includes the Lord Keeper or the Lords Commissioners for the custody of the Great Seal of Ireland.

"The National Debt Commissioners" means the Commissioners for the Reduction of the National Debt.

"The Bank" means the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, and includes their successors.

"Person" includes a body of persons corporate or unincorporate.

"Three per cent. stock" means the stocks of consolidated three pounds per centum annuities, reduced three pounds per centum annuities, and new three pounds per centum annuities, or any of such stocks.

"Two and a half per cent. stock" means the stock of two pounds ten shillings per centum annuities.

"The permanent annual charge of the National Debt" means the permanent annual charge for the National Debt within the meaning of the Sinking Fund Act, 1875, and the Acts amending the same.

10. This Act may be cited for all purposes as the National Debt (Conversion of Stock) Act, 1884.

CHAP. 24.

Colonial Attorneys Relief Act Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Extension of* 20 *&* 21 *Vict. c.* 39. 37 *&* 38 *Vict. c.* 41. *to colony on application of governor, &c.*
2. *Short title.*

An Act to amend the Colonial Attorneys Relief Act. (3rd July 1884.)

WHEREAS it is expedient to extend the provisions of the Colonial Attorneys Relief Act as to certain colonies or dependencies:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Upon application made by the governor or person exercising the functions of governor of any of Her Majesty's colonies or dependencies, and after it has been shown to the satisfaction of Her Majesty's Principal Secretary of State for the Colonies, that the system of jurisprudence as administered in such colony or dependency answers to and fulfils the conditions specified in section three of the Colonial Attorneys Relief Act, and also that the attorneys and solicitors of the superior courts of law or equity in England are admitted as attorneys and solicitors in the superior courts of law and equity of such colony or dependency, on production of their certificates of admission in the English courts, without service in the colony or dependency or examination, except in the laws of the colony or dependency in so far as they differ from the laws of England, Her Majesty may from time to time by Order in Council direct the Colonial Attorneys Relief Act to come into operation as to such colony or dependency, although

persons may in certain cases be admitted as attorneys or solicitors in such colony or dependency without possessing all the qualifications for admission or having fulfilled the conditions specified in the said section three, and thereupon, but not otherwise, the provisions of the Colonial Attorneys Relief Act shall apply to persons duly admitted as attorneys and solicitors in such colony or dependency after service and examination; that is to say, no attorney or solicitor of any such colony or dependency shall be admitted as a solicitor of the Supreme Court in England unless, in addition to the requirements of the Colonial Attorneys Relief Act, he prove by affidavit that he has served for five years under articles of clerkship to a solicitor or attorney-at-law in such colony or dependency, and passed an examination to test his fitness and capacity, before he was admitted an attorney or solicitor in such colony or dependency, and further that he has since been in actual practice as attorney or solicitor in such colony or dependency for the period of seven years at the least.

2. This Act may be cited as the Colonial Attorneys Relief Act Amendment Act, 1884.

CHAP. 25.

Customs and Inland Revenue Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

CUSTOMS AND EXCISE.

2. *Import duties on tea.*
3. *Duty on licence for hackney carriage.*
4. *Reduction of duties in carriages commenced to be used on or after the 1st October.*

PART II.

INCOME TAX.

5. *Grant of duties of income tax.*
6. *Provisions of Income Tax Acts to apply to duties hereby granted.*
7. *Provisions as to duty on dividends, &c. paid prior to passing of this Act.*
8. *Assessment of income tax under Schedules (A.) and (B.) and of the inhabited house duties for the year* 1884–5.
9. *Provisions of Income Tax Acts to apply to duties to be granted for succeeding year.*

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. (3rd July 1884.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Customs and Inland Revenue Act, 1884.

PART I.

Customs and Excise.

2. The duties of customs now chargeable upon tea shall continue to be levied and charged, on and after the first day of August one thousand eight hundred and eighty-four until the first day of August one thousand eight hundred and eighty-five, on the importation thereof into Great Britain or Ireland; (that is to say,)

Tea, the pound - - Sixpence.

3. On and after the first day of January one thousand eight hundred and eighty-five, the duty on an excise licence for a hackney carriage, that is to say, as so defined by the Metropolitan Public Carriage Act, 1869, or as deemed so to be by virtue of the Towns Police Clauses Act, 1847, or the General Police and Improvement (Scotland) Act, 1862 (whether adopted in any town or burgh or not), shall be the duty of fifteen shillings and no more.

4. Where a person has, on or after the first day of October in any year, commenced to keep and use a carriage for which a licence is required under the Act of the thirty-second and thirty-third years of Her Majesty's reign, chapter fourteen, he shall, upon delivering a declaration in writing signed by him to the above effect, be entitled to take out such licence upon payment of the duties following in lieu of the duties imposed by the said Act, that is to say:—

	£	s.	d.
If such carriage, not being a hackney carriage, shall have four or more wheels, and shall be of the weight of four hundredweight or upwards -	1	1	0
If such carriage shall be a hackney carriage or shall have less than four wheels, or having four or more wheels shall be of less weight than four hundredweight	0	7	6

PART II.

Income Tax.

5. There shall be charged, collected, and paid for the year which commenced on the sixth day of April one thousand eight hundred and eighty-four in respect of all property, profits, and gains mentioned or described as chargeable in the Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, the following duties of income tax; (that is to say,)

For every twenty shillings of the annual value or amount of property, profits, and gains chargeable under schedules (A.) (C.) (D.) or (E.) of the said Act the duty of fivepence;

And for every twenty shillings of the annual value of the occupation of lands, tenements, hereditaments, and heritages chargeable under schedule (B.) of the said Act,—

In England, the duty of twopence halfpenny;

In Scotland and Ireland respectively, the duty of one penny three farthings.

6. All such provisions contained in any Act relating to income tax as were in force on the fifth day of April one thousand eight hundred and eighty-four, shall have full force and effect, with respect to the duties of income tax granted by this Act so far as the same shall be consistent with the provisions of this Act.

7.—(1.) Where any dividend, interest, or other annual profits or gains, due or payable half-yearly or quarterly, shall have become due or payable in the course of the said year which commenced on the sixth day of April one thousand eight hundred and eighty-four, and shall have been paid to any person prior to the passing of this Act without any charge for the duty of income tax hereby granted having been made thereon or deducted therefrom, the amount of the said duty shall be added to the assessment in respect of the next half-yearly or quarterly payment to such person, and charged thereon and deducted therefrom accordingly.

(2.) Where any person liable to pay any rent, interest, annuity, or other annual payment in the course of the said year shall, on making any such payment prior to the passing of this Act, have not made any deduction in respect of the duty of income tax hereby granted, he shall be authorised to make the deduction on the occasion of the next payment, in addition to any other deduction which he may by law be authorised to make.

(3.) The charge or deduction of the duty of income tax hereby granted in the case of any payment made in the course of the said year prior to the passing of this Act shall be deemed to have been a legal charge or deduction.

8. With respect to the assessment of the duties of income tax hereby granted under Schedules (A.) and (B.) in respect of property

elsewhere than in the metropolis as defined by the Valuation (Metropolis) Act, 1869, and of the duties on inhabited houses elsewhere than in the said metropolis, for the year commencing, as respects England, on the sixth day of April, and as respects Scotland, on the twenty-fourth day of May one thousand eight hundred and eighty-four, the following provisions shall have effect:

(1.) The inspectors or surveyors of taxes shall be the assessors for the said duties, and, in lieu of the poundage by law granted to be divided between the assessors and collectors in regard to such duties, there shall be paid a poundage of three halfpence to the collectors thereof:

(2.) The sum charged as the annual value of any property in the assessment of income tax thereon for the year which commenced on the sixth day of April one thousand eight hundred and eighty-three, and the sum charged as the annual value of every inhabited house in the assessment made thereon for the same year as respects England, and as respects Scotland for the year which commenced on the twenty-fifth day of May one thousand eight hundred and eighty-three, shall be taken as the annual value of such property, or of such inhabited house, for the assessment and charge thereon of the duties of income tax hereby granted, or of the duties on inhabited houses, to all intents and purposes as if such sum had been estimated to be the annual value in conformity with the provisions in that behalf contained in the Acts relating to income tax and the duties on inhabited houses respectively:

(3.) The Commissioners executing the said Acts shall for each place within their district cause duplicates of the assessments to be made out and delivered to the collectors, together with the warrants for collecting the same.

9. In order to ensure the collection in due time of any duties of income tax which may be granted for the year commencing on the sixth day of April one thousand eight hundred and eighty-five, all such provisions contained in any Act relating to the duties of income tax as are in force on the fifth day of April one thousand eight hundred and eighty-five, shall have full force and effect with respect to the duties of income tax which may be so granted in the same manner as if the said duties had been actually granted and the said provisions had been applied thereto by an Act of Parliament passed on that day.

CHAP. 26.

Fisheries (Oyster, Crab, and Lobster) Act (1877) *Amendment Act*, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Board of Trade may make orders.*
2. *Short title.*

An Act to amend the Fisheries (Oyster, Crab, and Lobster) Act, 1877.
(14th July 1884.)

WHEREAS in certain parts of England the taking of small edible crabs for bait for fishing is injurious to the interests of the fishermen and to the supply of edible crabs:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Board of Trade, after such local inquiry, if any, as they think expedient, may, if they think fit, by order direct that the proviso in the last paragraph of the eighth section of the Act forty and forty-one Victoria, chapter forty-two, which permits edible crabs in certain conditions or under a certain size to be taken by or to be in the possession of any person if the said crabs were intended for bait for fishing, shall not apply within the area named in such order.

2. This Act may be cited for all purposes as the Fisheries (Oyster, Crab, and Lobster) Act (1877) Amendment Act, 1884.

CHAP. 27.

Sea Fisheries Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Extension of Part III. of* 31 *&* 32 *Vict. c.* 45. *to cockles.*
2. *Short title.*

An Act to further amend the Sea Fisheries Act, 1868. (14th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The powers conferred by Part III. of the Sea Fisheries Act, 1868, upon the Board of Trade to make orders with regard to oysters and mussels may be exercised by the Board of Trade with regard to cockles, in the same manner as if the expression "cockles" had been used in Part III. of that Act in addition to the expressions "oysters" and "mussels."

2. This Act may be cited as the Sea Fisheries Act, 1884.

CHAP. 28.

Tramways and Public Companies (Ireland) Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Power to amend presentment.*
2. *Notice of application.*
3. *Short title.*

SCHEDULE.

An Act to amend the Tramways and Public Companies (Ireland) Act, 1883. (14th July 1884.)

WHEREAS divers presentments have been passed by the grand juries of several counties in Ireland approving of the making of certain light railways and tramways, and guaranteeing dividends upon the paid-up capital necessary for the said undertakings, as defined by the Tramways and Public Companies (Ireland) Act, 1883:

And whereas it appears from the schedules of applications, resolutions, and other records of the said grand juries what were the maximum sums upon which such dividends were intended to have been guaranteed, but such amounts have been by mistake omitted from several of such presentments, which by reason of such omission have been held to be invalid:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for the several grand juries assembled at the summer assizes one thousand eight hundred and eighty-four to amend the presentments so passed in respect of and approving of the making of the several light railways and tramways respectively specified in the Schedule hereto by stating in such presentments respectively the respective amounts for which the same respectively were passed, and such presentments when amended shall be deemed to be presentments validly passed; and all proceedings before the Lord Lieutenant in Council or otherwise may be taken and carried on for the purpose of confirming the same and making Orders in Council founded thereon as if the same had originally been valid presentments.

2. Notice of the intention to apply to any grand jury under this Act shall be given by inserting at least one advertisement in a

newspaper circulating in the county to which such application shall relate, and by posting copies of such advertisement in some public place in every market town in each barony affected by the proposed guarantee: Provided, however, that such advertisement and posting may be inserted and made either before or after the passing of this Act.

3. This Act may be cited as the Tramways and Public Companies (Ireland) Amendment Act, 1884.

SCHEDULE.

1. A tramway and light railway from Skibbereen to Ballydehob and Schull.

2. A tramway and light railway from Ballinascorthy to Timoleague.

3. A tramway and light railway from Middleton to Ballinacarra and Cloyne.

4. A tramway and light railway from Cork to Blarney and Couchford.

5. A tramway and light railway from Mitchelstown to Fermoy.

6. A tramway and light railway from Athy (county Kildare) to Crettyard Bridge (Queen's County).

CHAP. 29.

Licensing (Evidence) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Extension of* 35 *&* 36 *Vict. c.* 94. *s.* 41.
2. *Short title.*

An Act to extend Section forty-one of the Licensing Act, 1872.

(28th July 1884.)

WHEREAS by the forty-first section of the Licensing Act, 1872, it is provided that magistrates or justices in petty session may, if the application is for the grant of a license, receive a copy of the license if the same has been wilfully withheld by the holder thereof, and it is expedient to extend the said section:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Section forty-one of the Licensing Act, 1872, shall be construed as if after the words "application is for the grant of a license" there were inserted the words "or for the transfer of a license."

Provided that the magistrates or justices shall be satisfied by evidence submitted to them that the license is withheld without any legal right to withhold the same.

2. This Act may be cited as the Licensing (Evidence) Act, 1884.

CHAP. 30.

Great Seal Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Authority for passing instrument under Great Seal.*
3. *Abolition of documents under Privy Seal.*
4. *Definitions.*
5. *Repeal.*

SCHEDULE.

An Act to simplify the passing of Instruments under the Great Seal of the United Kingdom. (28th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Great Seal Act, 1884.

2.—(1.) A warrant under Her Majesty's Royal Sign Manual, countersigned by the Lord Chancellor, or by one of Her Majesty's Principal Secretaries of State, or by the Lord High Treasurer, or two of the Commissioners of Her Majesty's Treasury, shall be a necessary and sufficient authority for passing any instrument under the Great Seal of the United Kingdom, according to the tenor of such warrant; Provided that any instrument which may now be passed under the Great Seal by the fiat or under the authority or directions of the Lord Chancellor or otherwise without passing through any other office may continue to be passed as heretofore.

(2.) The Lord Chancellor may from time to time make, and when made revoke and vary, regulations respecting the passing of instruments under the Great Seal of the United Kingdom, and respecting the warrants for that purpose, and the preparation of such instruments and warrants, and every such warrant shall be prepared by the Clerk of the Crown in Chancery.

(3.) No person shall make or prepare any warant for passing any instrument under the Great Seal of the United Kingdom, or procure any instrument to be passed under that Seal otherwise than in manner provided by this Act or the Crown Office Act, 1877; and any person who acts in contravention of this section shall be guilty of a misdemeanor.

3. It shall not be necessary that any instrument shall after the passing of this Act be passed under the Privy Seal.

4. In this Act—

The expression "Lord Chancellor" means the Lord High Chancellor of Great Britain, and, if there is a Lord Keeper or Lords Commissioners of the Great Seal of the United Kingdom, this Act shall apply as if such Lord Keeper or Lords Commissioners were substituted for the Lord Chancellor, and a warrant may be countersigned by any two of such Lords Commissioners.

The expression "instrument" in this Act includes any letters patent, letters close, writ, commission, and grant, and any document requiring to be passed under the Great Seal of the United Kingdom.

5. The enactments specified in the Schedule to this Act are hereby repealed.

Provided that such repeal shall not affect anything done or suffered before the passing of this Act.

SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
27 Hen. 8. c. 11. -	An Act concerning clerks of the Signet and Privy Seal.	The whole Act.
14 & 15 Vict. c. 82. -	An Act to simplify the forms of appointments to certain offices and the manner of passing grants under the great Seal.	The whole Act.
43 & 44 Vict. c. 10. -	The Great Seal Act, 1880 -	Section 3.

CHAP. 31.

Colonial Prisoners Removal Act, 1884.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short title.*

Prisoners Removal.

2. *Removal of prisoners from British possessions in certain cases.*
3. *Return of removed prisoner.*
4. *Regulations as to removal.*
5. *Removing authority.*
6. *Evidence of act of government of British possession or Secretary of State.*
7. *Warrant for removal of prisoner.*
8. *Dealing with removed prisoner.*
9. *Escape of prisoner from custody.*

Criminal Lunatics.

10. *Application of Act to removal of criminal lunatics.*

Miscellaneous.

11. *Costs of removal.*
12. *Power of legislature of British possession to pass laws for carrying Act into effect.*
13. *Power as to making and revocation of Orders in Council.*
14. *Application of Act to Channel Islands and Isle of Man.*
15. *Application of Act to place under foreign jurisdiction Acts.*
16. *Savings.*
17. *Application of Act to existing prisoners and criminal lunatics.*
18. *Definitions.*

An Act to make further provision respecting the removal of Prisoners and Criminal Lunatics from Her Majesty's possessions out of the United Kingdom. (28th July 1884.)

WHEREAS it is expedient to provide for the removal of prisoners undergoing sentence, and of criminal lunatics from one British possession to another British possession, or to the United Kingdom:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Colonial Prisoners Removal Act, 1884.

Prisoners Removal.

2. Where as regards a prisoner undergoing sentence of imprisonment in any British possession for any offence it appears to the removing authority herein-after mentioned either—

(*a.*) that it is likely that the life of the prisoner will be endangered or his health permanently injured by further imprisonment in such British possession; or,

(*b.*) that the prisoner belonged, at the time of committing the said offence, to the Royal Navy or to Her Majesty's regular military forces; or,

(*c.*) that the offence was committed wholly or partly beyond the limits of the said British possession; or,

(*d.*) that by reason of there being no prison in the said British possession in which the prisoner can properly undergo his sentence or otherwise the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect; or

(*e.*) that the prisoner belongs to a class of persons who under the law of the said British possession are subject to removal under this Act;

in any such case the removing authority may, subject nevertheless to the regulations in force

under this Act, order such prisoner to be removed to any British possession or to the United Kingdom to undergo his sentence or the residue thereof.

3.—(1.) Where a prisoner has been removed in pursuance of this Act, a Secretary of State or the Government of a British possession to which the prisoner has been so removed, may order the prisoner, for the purpose of undergoing the residue of his sentence, to be returned to the British possession from which he was removed.

(2.) If a Secretary of State or the Government of a British possession to which a prisoner is removed under this Act, requires the prisoner to be returned for discharge to the British possession from which he was removed, the prisoner shall, in accordance with the regulations under this Act, be returned to the said British possession for the purpose of being there discharged at the expiration of his sentence. In any other case a prisoner when discharged at the expiration of his sentence shall be entitled to be sent free of cost to the British possession from which he was removed;

Provided that where a prisoner at the date of his sentence belonged to the Royal Navy or to Her Majesty's regular military forces, nothing in this section shall require such prisoner to be returned to the British possession from which he was removed, or entitle him to be sent there free of cost.

4.—(1.) It shall be lawful for Her Majesty in Council from time to time to make, and when made, revoke and vary regulations as to the removal, return, and discharge of prisoners under this Act.

(2.) The regulations may provide for varying the conditions of a sentence of imprisonment passed in a British possession, where they differ from the conditions of a sentence of imprisonment in the part of Her Majesty's dominions to which the prisoner is removed, with a view to bringing them into conformity with the latter conditions, but the prisoner shall not by reason of such variation undergo an imprisonment of any longer duration; and where the latter conditions appear to a Secretary of State to be more severe than the former conditions, the Secretary of State may remit a portion of the imprisonment, so that the punishment undergone by the prisoner shall not in the opinion of the Secretary of State be more severe than the punishment to which the prisoner was originally sentenced, and the sentence of imprisonment shall, so long as the prisoner remains in the part of Her Majesty's dominions to which he is removed, be carried into effect as if the conditions thereof as so varied were the conditions of the original sentence.

(3.) The regulations may also provide for the forms to be used under this Act and generally for the execution of this Act.

(4.) All regulations made under this section shall be duly observed by all persons, and shall be laid before both Houses of Parliament as soon as may be after they are made.

5. The removing authority for the purposes of this Act shall be a Secretary of State acting with the concurrence of the Government of every British possession concerned.

6.—(1.) The concurrence of the Government of a British possession, and any requisition by the Government of a British possession, may be given or made by the Governor in Council or such other authority as may be from time to time provided by the law of that possession, but shall be signified by writing under the hand of the Governor or of the Colonial Secretary or of any other officer appointed in this behalf by the law of that possession.

(2.) Any writing purporting to give such concurrence or make such requisition, and to be signed by the Governor or Colonial Secretary or other officer for the time being, shall be conclusive evidence that the concurrence of or requisition by the Government of the British possession has been duly given or made according to law; and any writing purporting to be under the hand of a Secretary of State, and to order the removal of a prisoner from a British possession, shall be conclusive evidence that such order has been duly given by the Secretary of State, and every such writing as above in this section mentioned shall be admissible in evidence in any court in Her Majesty's dominions without further proof.

7.—(1.) Where the removal of a prisoner from a British possession is ordered in pursuance of this Act, a Secretary of State or the Governor of the British possession may by warrant under his hand direct the prisoner to be removed to the part of Her Majesty's dominions mentioned in the said order, and for that purpose to be delivered into the custody of the persons named or described in the warrant or some one or more of them, and to be held in custody and conveyed by sea or otherwise to the said part of Her Majesty's dominions, there to undergo his sentence, or the residue thereof, until returned in pursuance of this Act or discharged, and such warrant shall be forthwith executed according to the tenor thereof.

(2.) Where a prisoner is to be returned to a British possession, a Secretary of State or the Governor of the possession in which he has been undergoing his sentence, shall issue a like warrant, which shall be duly executed according to the tenor thereof.

(3.) Every warrant purporting to be issued in pursuance of this Act, and to be under the hand of a Secretary of State or Governor of a British possession, shall be received in evidence in every court of justice in Her Majesty's dominions without further proof, and shall be evidence of the facts therein stated, and all acts done in pursuance of such warrant shall be deemed to have been authorised by law.

8.—(1.) Every prisoner removed in pursuance of this Act shall, until he is returned in pursuance of this Act, be dealt with in the part of Her Majesty's dominions to which he is removed, in like manner as if his sentence (with such variation, if any, of the conditions thereof as may have been duly made in pursuance of regulations under this Act) had been duly awarded in that part, and shall be subject accordingly to all laws and regulations in force in that part, with the following qualifications, that his conviction judgment and sentence may be questioned in the part of Her Majesty's dominions from which he has been removed in the same manner as if he had not been removed, and that his sentence may be remitted and his discharge ordered in the same manner and by the same authority as if he had not been removed.

(2.) The officer in charge of any prison, on request by any person having the custody of a prisoner under a warrant issued in pursuance of this Act, and on payment or tender of a reasonable amount for expenses, shall receive such prisoner and detain him for such reasonable time as may be requested by the said person for the purpose of the proper execution of the warrant.

9.—(1.) If a prisoner while in custody in pursuance of this Act, or under a warrant issued in pursuance of this Act escapes, by breach of prison or otherwise, out of custody, he may be retaken in the same manner as a person convicted of a crime against the law of the place to which he escapes may be retaken upon an escape.

(2.) A person guilty of the offence of so escaping or of attempting so to escape, or of aiding or attempting to aid any such prisoner so to escape, may be tried in any of the following parts of Her Majesty's dominions, namely, the part to which and the part from which the prisoner is being removed or returned, and the part in which the prisoner escapes, and the part in which the offender is found, and such offence shall be deemed to be an offence against the law of the part of Her Majesty's dominions in which he may be so tried, and for all purposes of and incidental to the apprehension, trial, and punishment of the person accused of such offence, and of and incidental to any proceedings and matters preliminary, incidental to or consequential thereon, and of and incidental to the jurisdiction of any court constable or officer with reference to such offence, and to the person accused thereof, such offence shall be deemed to have been committed in the said part, and such person may be punished in accordance with the Courts (Colonial) Jurisdiction Act, 1874.

Criminal Lunatics.

10.—(1.) The provisions of this Act shall apply to a person in custody as a criminal lunatic in like manner, so far as consistent with the tenor thereof, as they apply to a prisoner undergoing sentence of imprisonment; and separate regulations may be made by Her Majesty in Council under this Act in relation to criminal lunatics and (subject to those regulations) all laws and regulations in force in the part of Her Majesty's dominions in which a criminal lunatic removed or returned is for the time being in custody under a warrant issued in pursuance of this Act, shall apply to such criminal lunatic as if he had become a criminal lunatic in that part.

(2.) Where a person, who is a criminal lunatic by reason of being unfit to be tried for an offence, is removed in pursuance of this Act, and a Secretary of State or the Government of the British possession to or from which such person was removed considers that such person has become sufficiently sane to be tried for the said offence, and requires him to be returned for trial to the British possession from which he was removed, he shall, in accordance with the regulations under this Act be returned as a prisoner to the said British possession for the purpose of being there tried for the said offence, and shall be removed thither in custody in like manner as if he had been arrested under a warrant on a charge for the said offence.

Miscellaneous.

11.—(1.) The cost of the removal of any prisoner or criminal lunatic under this Act and of his maintenance while in confinement, and of his return, and of his being sent after discharge to any place, shall be paid in such manner as may be arranged between the Governments of the British possessions con-

cerned and the Secretary of State, subject, as regards any cost to be paid out of moneys provided by Parliament, to the consent of the Commissioners of Her Majesty's Treasury.

(2.) Nothing in this Act shall affect any power to recover the expenses of removing or returning any prisoner or criminal lunatic from the property of such prisoner or criminal lunatic or otherwise.

12. If the legislature of a British possession pass any law—

(*a.*) For determining the authority by whom and the manner in which any jurisdiction, power, or concurrence under this Act is to be exercised or given; or

(*b.*) for payment of the costs incurred in the removal, maintenance, return, or sending back after discharge of a prisoner or criminal lunatic; or

(*c.*) for dealing in such possession with prisoners or criminal lunatics removed thereto in pursuance of this Act; or

(*d.*) for making any class of prisoners subject to removal under this Act; or,

(*e.*) otherwise in any manner for the carrying of this Act or any part thereof into effect as regards the said possession,

it shall be lawful for Her Majesty in Council to direct that such law or any part thereof shall with or without modification or alteration be recognised and given effect to throughout Her Majesty's dominions and on the high seas as if it were part of this Act.

13.—(1.) It shall be lawful for Her Majesty in Council from time to time to make Orders for the purposes of this Act, and to revoke and vary any Order so made, and every Order so made shall while it is in force have the same effect as if it were enacted in this Act.

(2.) An Order in Council made for the purposes of this Act shall be laid before Parliament as soon as may be after it is made if Parliament is then in session, or, if not, as soon as may be after the commencement of the then next session of Parliament.

14. This Act shall extend to the Channel Islands and Isle of Man as if they were part of England and the United Kingdom.

15. It shall be lawful for Her Majesty in Council from time to time to direct that this Act shall apply, as if, subject to the conditions, exceptions, and qualifications (if any) contained in the Order, any place out of Her Majesty's dominions in which Her Majesty has jurisdiction, and which is named in the Order, were a British possession and part of Her Majesty's dominions, and to provide for carrying into effect such application.

16.—(1.) Nothing in this Act shall affect the provisions of the Army Act, 1881.

(2.) This Act shall not affect any agreement made either before or after the passing of this Act under the Colonial Prisoners Removal Act, 1869, nor any provisions contained in the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter eighty-one, intituled "An Act to "authorise the removal from India of insane "persons charged with offences, and to give "better effect to inquisitions of lunacy taken "in India."

17. This Act shall apply to a prisoner who has been convicted, and to a criminal lunatic who has become a criminal lunatic, before the passing of this Act, in like manner as if he had been convicted and become a criminal lunatic after the commencement of this Act.

18. In this Act, unless the context otherwise requires, the following expressions have the following meanings; that is to say,

The expression "British possession" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes all other territories and places being part of Her Majesty's dominions, and all territories and places within Her Majesty's dominions which are not part of India and are under one legislature shall be deemed to be one British possession, and any part of India under a Governor or Lieutenant Governor shall be deemed to be one British possession.

The expression "India" means all territories and places within Her Majesty's dominions which are subject to the Governor General of India in Council.

The expression "legislature," where there are local legislatures, as well as a central legislature, means the central legislature only, and in every part of India means the Governor General in Council.

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State.

The expression "Governor" means any person or persons administering the government of a British possession, and includes the Governor General of India and also the Governor and Lieutenant Governor of any part of India.

The expression "Colonial Secretary" includes a person performing the like duties as a Colonial Secretary, whether known as Government Secretary, Chief Secretary to the Government, or by any other title.

The expression "prison" includes any place for the confinement or detention of prisoners whether convicted or unconvicted.

The expression "sentence of imprisonment" means any sentence involving confinement in a prison, whether combined or not with labour, and whether known as penal servitude, imprisonment with hard labour, rigorous imprisonment, imprisonment, or otherwise, and includes a sentence awarded by way of commutation as well as an original sentence passed by the court.

The expression "criminal lunatic" means a person detained in custody by reason of his having been charged with an offence, and either found to have been insane at the time of such offence, or found or certified or otherwise lawfully proved to be unfit on the ground of his insanity to be tried for the same, and includes a person convicted of an offence and afterwards certified or otherwise lawfully proved to be insane.

CHAP. 32.

Royal Military Asylum Chelsea (Transfer) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2.
3. *General saving.*
SCHEDULE.

An Act for transferring the Royal Military Asylum at Chelsea from the Commissioners of Her Majesty's Woods, Forests, and Land Revenues to the Commissioners of Her Majesty's Works and Public Buildings.

(28th July 1884.)

WHEREAS the Royal Military Asylum at Chelsea and the lands and buildings connected therewith and described in the schedule to this Act are now under the management of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues (herein-after termed the Commissioners of Woods), and it is expedient that the same be vested in and placed under the management of the Commissioners of Her Majesty's Works and Public Buildings (herein-after termed the Commissioners of Works):

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Royal Military Asylum Chelsea (Transfer) Act, 1884.

2. From and after the passing of this Act the Royal Military Asylum at Chelsea, with the lands and buildings thereon described in the schedule to this Act, shall by virtue of this Act be vested, free, and discharged from the leasehold interest in any part thereof of any one of Her Majesty's Principal Secretaries of State, in the Commissioners of Works and their successors as incorporated by the Works and Public Buildings Act, 1874, for the estate or interest and purposes, and upon the trusts, and subject to the leases (save as aforesaid) rights of way and other rights (if any), for upon and subject to which the said Asylum and premises or any of them were respectively vested in the Crown or any person or persons on behalf of the Crown immediately before the passing of this Act; and the Commissioners of Works shall have the management of the said Asylum and premises, and shall in relation thereto exercise and perform all powers and duties and be subject to all liabilities which would have been exercised and performed by the Commissioners of Woods, or any other person or persons on behalf of the Crown, or to which the Commissioners of Woods, or any other person or persons on behalf of the Crown, would have been subject if this Act had not passed.

3. Saving always to all persons, bodies politic or corporate, and their respective heirs, executors, administrators, successors, and assigns (other than Her Majesty, her heirs and successors, her Secretaries of State, and the Commissioners of Woods and the Commissioners of Works), all such estates, rights, titles, claims, and demands whatsoever as they respectively have at the passing of this Act or might or could have had if this Act had not passed.

SCHEDULE.

All those several pieces or parcels of land with the buildings thereon, situated in the parish of St. Luke, Chelsea, containing together about ten acres, and coloured pink on a plan which has been signed by the Honourable Charles Alexander Gore, a Commissioner of Her Majesty's Woods, Forests, and Land Revenues, and The Right Honourable George Shaw Lefevre, First Commissioner of Her Majesty's Works and Public Buildings, and which is deposited in the Office of Land and Revenue Records and Inrolments.

CHAP. 33.

Newcastle Chapter Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Transfer of canonry in Durham to cathedral of Newcastle.*
3. *Establishment of chapter of Newcastle.*
4. *Statutes for the chapter.*
5. *Income of dean and canons of Newcastle.*
6. *Provision for establishment of canons at Newcastle before foundation of dean and chapter.*
7. *Trusts of Newcastle Chapter Endowment Fund.*
8. *Scheme of Ecclesiastical Commissioners approved by Order in Council for carrying into effect the Act.*
9. *Validity and publication of Orders in Council.*
10. *Common fund of Commissioners not applicable to endowment.*
11. *Payment out of estate of deceased person of subscriptions promised by him for endowment fund.*
12. *Transfer of patronage of benefices in diocese of Newcastle.*
13. *Provision as to existing Archdeacon of Northumberland.*

SCHEDULES.

An Act to make provision for the foundation of a Dean and Chapter for the Bishopric of Newcastle, and for the transfer to the Cathedral Church of Newcastle of one of the canonries in the Cathedral Church of Durham, and for the transfer of certain ecclesiastical patronage to the Bishopric and Chapter of Newcastle, and for other purposes connected therewith.

(28th July 1884.)

WHEREAS a bishopric of Newcastle has been founded in pursuance of the Bishoprics Act, 1878, and under that Act the endowment of the bishopric of Newcastle is to be held by the Ecclesiastical Commissioners for England (in this Act referred to as the Ecclesiastical Commissioners) upon trust to provide the income therein mentioned and a residence for the Bishop of Newcastle, and subject thereto to make good to the bishopric of Durham the portion of the endowment or income of that bishopric transferred in pursuance of the said Act to the bishopric of Newcastle, and subject as aforesaid, upon trust for the foundation of a dean and chapter for the bishopric in such manner as may be from time to time provided by Order in Council:

And whereas in pursuance of the said Act an Order in Council was made on the eighteenth day of August one thousand eight hundred and eighty-two, confirming a scheme of the Ecclesiastical Commissioners, and by such Order, among other matters, the Archdeacon of Northumberland was constituted an officer of the diocese of Newcastle, and subject to the episcopal jurisdiction of the Bishop of Newcastle and not of the Bishop of Durham, and the archidiaconal dignity of such Archdeacon was transferred from the Cathedral church of Durham to the cathedral church of Newcastle, and the endowment belonging to such archdeaconry was directed to continue to belong to the same, notwithstanding the transfer of the archdeaconry from the diocese of Durham to the diocese of Newcastle:

And whereas before the passing of the Bishoprics Act, 1878, a canonry in the cathedral church of Durham had been annexed and united to the archdeaconry of

Northumberland, and it is expedient to provide for the transfer of the endowment of such canonry to the cathedral church at Newcastle:

And whereas the Bishop of Durham assents to the said transfers, and it is expedient to make provision with respect thereto:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Newcastle Chapter Act, 1884.

2. When the canonry in the cathedral church of Durham which at the passing of this Act is annexed to the archdeaconry of Northumberland first becomes vacant after the passing of this Act, then as from the date of the vacancy, the canonry so vacant shall be suspended, and the endowment thereof with the exception of the house attached thereto shall be transferred to the dean and chapter of the cathedral church of Newcastle, if then founded, and if not, to the Newcastle Chapter Endowment Fund, and subject to the provision in favour of the person who holds the archdeaconry at the passing of this Act, there shall be paid to the Archdeacon of Northumberland for the time being, out of the income of the endowment so transferred, such annual sum as the Ecclesiastical Commissioners from time to time fix.

3. (1.) Whenever the Ecclesiastical Commissioners certify to Her Majesty under their common seal that the net income of the Newcastle Chapter Endowment Fund will provide such minimum income as herein-after mentioned for a dean and not less than four residentiary canons, Her Majesty by Order in Council may found a dean and chapter of Newcastle, and constitute them a body corporate, with all the rights and powers of other cathedral chapters in England, or with such of them as to Her Majesty may seem fit, and may subject them to the jurisdiction of the Bishop of Newcastle as visitor.

(2.) The dean and chapter of Newcastle, and the endowment thereof, shall be deemed for all purposes to be subject to the same laws as the dean and chapter of any other bishopric in England, and the endowment thereof; and the deanery shall be in the direct patronage of Her Majesty, and every canonry shall be in the patronage of the Bishop of Newcastle for the time being.

4. It shall be lawful for Her Majesty from time to time, by Order in Council, to make, and when made alter and revoke, statutes for the order, rule, and governance of the dean and chapter of Newcastle, and the members, officers, and endowment thereof.

5. For the purposes of this Act the minimum income shall be a net annual income for a dean of one thousand pounds, and for a canon of three hundred pounds, exclusive in both cases of the value of any residence.

6. (1.) Whenever from time to time before the foundation of a dean and chapter of Newcastle the Ecclesiastical Commissioners certify to Her Majesty under their common seal that the net income of the Newcastle Chapter Endowment Fund will provide such minimum income as is mentioned in this Act for any canon or canons, Her Majesty by Order in Council may establish a residentiary canonry or residentiary canonries in the cathedral church of Newcastle, and assign thereto an income not being less than the minimum income, and by the same or any other Order in Council may from time to time define the duties which an incumbent of any such canonry is to perform in the said cathedral church and in the administration of the diocese of Newcastle.

(2.) Whenever the Ecclesiastical Commissioners certify to Her Majesty, under their common seal, that the endowment of a canonry of Durham has been transferred to the Newcastle Chapter Endowment Fund, in pursuance of this Act, there may be established by Her Majesty, by Order in Council, in the cathedral church of Newcastle, in pursuance of this section, a residentiary canonry annexed to the archdeaconry of Northumberland, but the duties which the incumbent of such canonry is to perform, shall be such as, in the opinion of Her Majesty in Council, will not interfere with the performance of his duties as Archdeacon of Northumberland.

(3.) Every canonry established in pursuance of this section shall be in the patronage of the Bishop of Newcastle for the time being, and the incumbent of every such canonry shall hold his office by the same tenure as the incumbent of any other canonry in England, and, subject to any exceptions contained in any such Order in Council, the law relating to other canonries in England shall, so far as may be consistently with the tenour thereof and with the circumstances of the case, apply to a canonry so established, and to the incumbent thereof.

7. (1.) The Newcastle Chapter Endowment Fund shall be held upon trust to pay the annual sum charged thereon by this Act to the Arch-

deacon of Northumberland, and subject thereto upon trust for the foundation of a dean and chapter of Newcastle. There shall be carried to that fund such portion, if any, of the Newcastle Bishopric Endowment Fund as is applicable for the said trust.

(2.) The annual income arising from the Newcastle Chapter Endowment Fund shall, until the dean and chapter is founded in pursuance of this Act, be applied in paying the Archdeacon of Northumberland and the incumbent of any canonry established in pursuance of this Act, and, subject to that payment, shall be invested and accumulated as part of the fund.

(3.) The Ecclesiastical Commissioners shall have the same power with respect to sale, investment, management, leasing, or other dealing in the case of the fund as they have in the case of the Newcastle Bishopric Endowment Fund.

8. The Ecclesiastical Commissioners may from time to time submit for the approval of Her Majesty in Council a scheme or schemes for all or any of the following matters; namely,

(1.) For the transfer to the dean and chapter of Newcastle, or to the Newcastle Chapter Endowment Fund, of the endowment of the canonry of Durham, directed by this Act to be so transferred;

(2.) For transferring to the dean and chapter of Newcastle, when founded, the Newcastle Chapter Endowment Fund; and

(3.) For making such provisions and arrangements as may be necessary for carrying into complete effect the said transfers and the foundation of the dean and chapter of Newcastle and the payment of the Archdeacon of Northumberland and the establishment of any canonry or canonries in the cathedral church of Newcastle, and this Act and any Order in Council made thereunder, and all matters incidental to anything before in this section mentioned.

9. (1.) An Order in Council made in pursuance of this Act shall have effect as if it were enacted in this Act.

(2.) An Order in Council made in pursuance of this Act shall be published in the London Gazette, and laid before both Houses of Parliament forthwith after it is made, if Parliament be then in session, or if not, within one month after the commencement of the then next session of Parliament.

(3.) A scheme made in pursuance of this Act shall be of no effect until it has been approved by Order in Council.

10. Nothing in this Act shall authorise the Ecclesiastical Commissioners to apply any portion of their common fund towards the endowment of the dean and chapter of Newcastle, or of any canonry in the cathedral church of Newcastle, save in so far as relates to the endowment of the canonry of Durham directed by this Act to be transferred.

11. (1.) Where either before or after the passing of this Act a person having promised a contribution to the Newcastle Bishopric Endowment Fund, or to the Newcastle Chapter Endowment Fund, has died before payment of the whole or some part of the contribution so promised, the person administering the estate of such deceased person may, by leave of the High Court of Justice, pay out of such estate the whole or any part of the contribution promised, or of the portion unpaid as aforesaid, and the Court may give such permission if, after such inquiry and with such consents (if any) as to the Court seems proper, it seems to the Court under all the circumstances of the case reasonable to authorise such payment, and the Court may make such order as to the costs of the application and give such directions respecting the payment of the contribution as to the Court seems proper.

(2.) Subject to rules of court, an application for the purpose of this section may be made to a judge of the Chancery Division in chambers in a summary manner, and may be made although there is no action for the administration of the said estate.

12. The patronage of any benefices in the diocese of Newcastle belonging to the bishopric of Carlisle, the bishopric of Chester, the bishopric of Manchester, or the vicarage of Newcastle may, with the approval of the Archbishop of York and of the Ecclesiastical Commissioners, be transferred by deed executed by the bishop of the bishopric, or vicar, for the time being holding the patronage, and registered in the registry of the diocese of Newcastle, and published in the "London Gazette," to the bishopric of Newcastle or to the dean and chapter of Newcastle and their successors; and the patronage of the benefice of Bywell Saint Peter, in the archdeaconry of Northumberland and diocese of Newcastle, and now in the patronage of the dean and chapter of Durham, shall, on the passing of this Act, vest in the Archdeacon of Northumberland for the time being, and the patronage of the benefice of Saint Mary Le Bow, in the city and diocese of Durham, and now in the patronage of the Archdeacon of Northumberland, shall, on the passing of this Act, vest in the dean and chapter of Durham.

The patronage of the benefices set forth in

Schedule A. to this Act, and now vested in the dean and chapter of Durham, shall, immediately on the passing of this Act, vest in and be exercised by the Bishop of Newcastle and his successors.

And the patronage of the benefices set forth in Schedule B. to this Act, and now vested in the dean and chapter of Durham, shall vest in and be exercised by the dean and chapter of Newcastle as soon as they shall be legally constituted a corporate body with power to hold and exercise ecclesiastical patronage.

13. The person who holds the archdeaconry of Northumberland at the passing of this Act, shall be entitled to continue to reside as canon of Durham until he is collated or instituted to a benefice within the diocese of Newcastle, when he shall at once resign the canonry of Durham, and such person may resign the canonry of Durham without resigning the archdeaconry of Northumberland, and the canonry so resigned shall become vacant within the meaning of this Act; and after such resignation, there shall be paid to him, so long as he remains archdeacon of Northumberland, the net income of the endowment of the canonry transferred by this Act. Nothing in any law or statute shall be deemed to prevent the person who is archdeacon of Northumberland at the passing of this Act from being honorary canon in the cathedral church of Newcastle.

SCHEDULE A.

Section 12

Holy Trinity, Berwick-upon-Tweed,
Spittal,
Scremerston,
Holy Island,
and
Wallsend.

SCHEDULE B.

Whittonstall,
Cambois,
Choppington,
and
Duddo.

Section 12

CHAP. 34.

Elections (Hours of Poll) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Hours of polling in boroughs with more than three thousand electors.*
2. *Definitions.*
3. *Short title.*

An Act to extend the Hours of Polling at Parliamentary and Municipal Elections in certain Boroughs.

(28th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1.) At every parliamentary or municipal election to which this Act applies the poll (if any) shall commence at eight o'clock in the forenoon and be kept open until eight o'clock in the afternoon of the same day and no longer.

(2.) A parliamentary election to which this Act applies shall be an election of a member or members to serve in Parliament for any parliamentary borough within the meaning of this Act which has, for the time being, as appears from the number of names entered in the register of electors for the time being in operation in such borough, a number of registered electors exceeding three thousand.

(3.) A municipal election to which this Act applies shall be an election of a councillor, commissioner of police, auditor, or revising assessor in any municipal borough within the meaning of this Act or in any ward thereof, where the whole or part of the area of such borough is co-extensive with, or included in the area of a parliamentary borough with such

number of registered electors as above in this section mentioned.

2. In this Act—

The expression "parliamentary borough" means any city, borough, place, or combination of places (not being a county at large or division of a county at large, or university or universities) which returns a member or members to serve in Parliament; and

The expression "municipal borough" means, as regards England, a borough subject to the Municipal Corporations Act, 1882, and as regards Scotland, means a burgh or town which has a town council or police commissioners, and as regards Ireland means a borough subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled "An "Act for the regulation of municipal "Corporations in Ireland" and the Acts amending the same:

The word "councillor" shall, in Ireland, be taken to include alderman.

3. This Act may be cited as the Elections (Hours of Poll) Act, 1884.

CHAP. 35.

County of Dublin Jurors' and Voters' Revision Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to appoint revising barrister.*
3. *Provision for absence of revising barrister.*
4. *Deduction from salary of future Recorders.*

An Act to facilitate the Revision of Lists of Jurors and Voters, and the Registration of Voters, in the County of Dublin. (28th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the County of Dublin Jurors' and Voters' Revision Act, 1884.

2. It shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being from time to time to appoint a barrister-at-law, who shall have actually practised ten years at the least in the Superior Courts in Dublin, and who shall not at the time of his appointment have ceased to practise, to discharge all the duties with regard to the registration of parliamentary voters, and the revision of the list of jurors, in the county of Dublin which are capable of being discharged by the Recorder of Dublin.

After such appointment has been made, the Recorder shall cease to discharge the duties with reference to the registration of voters and the revision of the lists of jurors, heretofore discharged by him. The person so appointed shall have, with respect to such registration and revision, the same powers, duties, rights, and privileges as the said Recorder.

The provisions of the several Acts which regulate the registration of parliamentary voters in counties in Ireland, and the revision of the lists of jurors, shall apply to the duties with reference to such registration and revision from time to time performed by the person so appointed, as fully as such provisions would have applied if those duties had been performed by the said Recorder.

The person so appointed shall be styled "revising barrister for the county of Dublin," and shall hold office during good behaviour, and shall be paid out of moneys to be provided by Parliament such annual salary as the Lord Lieutenant or other chief governor or governors of Ireland with the consent of the Commissioners of Her Majesty's Treasury may appoint.

3. In case the Lord Chancellor or Keeper or Commissioners of the Great Seal of Ireland for the time being are satisfied that the revising barrister for the county of Dublin is unable from unavoidable absence or illness to dis-

charge his duties as such revising barrister, it shall be lawful for the Lord Chancellor or Keeper or Commissioners to appoint some other barrister, qualified as by this Act is provided in the case of the revising barrister for the county of Dublin, to do the duty of the revising barrister for the county of Dublin for such time as such absence or illness shall continue. Every person so appointed shall be paid such sum as the said Lord Chancellor or Keeper or Commissioners shall appoint, which shall be deducted from the salary of the said revising barrister.

4. When first after the passing of this Act a vacancy occurs in the office of Recorder of Dublin, there shall be deducted from the salary of the person appointed to be Recorder, and of his successors in that office, an annual sum of one hundred pounds.

CHAP. 36.

Prisons (Ireland) Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Expense of prisoners to be defrayed out of moneys provided by Parliament.*
3. *Joint visiting committees for prisons used for more counties than one.*
4. *Interpretation.*

An Act to amend the General Prisons (Ireland) Act, 1877, in certain particulars. (28th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Prisons (Ireland) Amendment Act, 1884.

2. From and after the passing of this Act the expenses incurred in respect of a prisoner for food, clothing, custody, safe-conduct, and removal from one place of confinement to another or otherwise, from the period when the order for his committal to prison is made until his death or discharge from prison, shall be defrayed out of moneys provided by Parliament, with this proviso, that nothing in this Act shall exempt a prisoner from payment of any costs or expenses in respect of his conveyance to prison or otherwise which he would have been liable to pay if this Act had not been passed.

3. Where any prison is not exclusively used for the confinement of prisoners belonging to any one county,—

A joint visiting committee may, notwithstanding anything contained in section twenty-four of the General Prisons (Ireland) Act, 1877, be appointed for such prison, if the Lord Lieutenant so orders;

A joint visiting committee shall consist of so many justices as the Lord Lieutenant shall prescribe, who shall be appointed by such grand juries, and in such proportions, as the Lord Lieutenant, having regard to the locality and use of the prison, and the class of prisoners confined therein, may from time to time order.

4. Expressions used in this Act shall respectively have the same meaning in this Act as they are declared to have in the General Prisons (Ireland) Act, 1877.

CHAP. 37.

Public Libraries Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Power of council, board, &c. to accept parliamentary grant.*
2. *Explanation of* 18 *&* 19 *Vict. c.* 70. *s.* 18., 18 *&* 19 *Vict. c.* 70. *s.* 9., *and* 30 *&* 31 *Vict. c.* 37. *s.* 10.
3. *Power to establish library, museum, or school for science or art in connexion with any of the others of them.*
4. *Definitions.*
5. *Short titles.*
SCHEDULE.

An Act to amend the Public Libraries Acts. (28th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Whereas doubts have arisen as to whether authorities acting under the Public Libraries Acts, have power to fulfil the conditions required for a parliamentary grant in aid of the establishment of a school of science and art, and it is expedient to remove such doubts: It is therefore hereby declared and enacted that,—

Where any authority acting under the Public Libraries Acts accepts a grant out of moneys provided by Parliament from any Committee of the Privy Council on Education towards the purchase of the site, or the erection, enlargement, or repair, of any school for science and art, or school for science, or school for art, or of the residence of any teacher in such school, or towards the furnishing of any such school, such authority shall have power to accept such grant upon the conditions prescribed for the acceptance thereof by the said Committee, and to execute such instruments as may be required by the said Committee for carrying into effect such conditions, and upon payment of the grant shall, together with their successors, be bound by such conditions and instrument, and have power and be bound to fulfil and observe the same.

2. Whereas section eighteen of the Public Libraries Act, 1855, as regards England, and section nine of the Public Libraries Act (Ireland), 1855, as regards Ireland, provide for the erection of buildings "suitable for "public libraries, or museums, or both, or "for schools for science or art":

And whereas section ten of the Public Libraries Act (Scotland), 1867, provides for the erection of buildings "suitable for public "libraries, art galleries, or museums, or each "respectively," and doubts are entertained as to the meaning of those provisions: Now, therefore, it is hereby declared and enacted that—

Buildings may under the said sections be erected for public libraries, public museums, schools for science, art galleries, and schools for art, or for any one or more of those objects.

3. (1.) Where any of the following institutions, namely, a public museum, a public library, a school for science and art, a school for science, a school for art, or an art gallery has been established either before or after the passing of this Act under the Public Libraries Acts, or any of them, there may at any time be established in connexion therewith any other of the said institutions without any further proceedings being taken under the said Acts.

(2.) Section ten of the Public Libraries Amendment Act (England and Scotland), 1866, and section seventeen of the Public Libraries Act (Scotland), 1867, are hereby repealed, without prejudice to anything done under those sections.

4. In this Act,—

The expression "Public Libraries Acts" means as respects England, Scotland, and Ireland respectively, the Acts mentioned in the first, second, and third parts respectively of the schedule to this Act.

The expression "authority acting under the Public Libraries Acts" means the council, board, magistrates, or commissioners acting in execution of the said Public Libraries Acts.

5. This Act may be cited as the Public Libraries Act, 1884.

The Acts mentioned in the first part of the schedule to this Act may be cited together with this Act as the Public Libraries (England) Acts, 1855 to 1884.

The Acts mentioned in the second part of the schedule to this Act may be cited together with this Act as the Public Libraries (Scotland) Acts, 1867 to 1884.

The Acts mentioned in the third part of the schedule to this Act may be cited together with this Act as the Public Libraries (Ireland) Acts, 1855 to 1884.

SCHEDULE.

PART I.

Public Libraries (England) Acts.

Session and Chapter.	Title.
18 & 19 Vict. c. 70 - - -	The Public Libraries Act, 1855.
29 & 30 Vict. c. 114 - - -	The Public Libraries Amendment Act (England and Scotland), 1866.
34 & 35 Vict. c. 71 - - -	The Public Libraries Act, 1855, Amendment Act, 1871.
40 & 41 Vict. c. 54 - - -	The Public Libraries Amendment Act, 1877.

PART II.

Public Libraries (Scotland) Acts.

30 & 31 Vict. c. 37 - - -	The Public Libraries Act (Scotland), 1867.
34 & 35 Vict. c. 59 - - -	The Public Libraries Act (Scotland), 1867, Amendment Act, 1871.
40 & 41 Vict. c. 54 - - -	The Public Libraries Amendment Act, 1877.

PART III.

Public Libraries (Ireland) Acts.

18 & 19 Vict. c. 40 - - -	The Public Libraries Act (Ireland), 1855.
40 & 41 Vict. c. 15 - - -	The Public Libraries (Ireland) Amendment Act, 1877.
40 & 41 Vict. c. 54 - - -	The Public Libraries Amendment Act, 1877.

CHAP. 38.

Indian Marine Service Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power for Governor General in Council to make laws for Indian Marine Service.*
3. *Definition of Indian waters.*
4. *Effect and judicial notice of laws made under Act.*
5. *Restriction on or power to make law imposing sentence of death.*
6. *Placing of vessels, officers, and men of Indian Marine Service under Naval Discipline Acts in time of war.*

An Act to provide for the regulation of Her Majesty's Indian Marine Service. (28th July 1884.)

WHEREAS a marine establishment, called Her Majesty's Indian Marine Service, is employed under the direction of the Governor General of India in Council for the transport of troops, the guarding of convict settlements, the suppression of piracy, the survey of coasts and harbours, the visiting of lighthouses, the relief of distressed or wrecked vessels, and other local objects, and is maintained out of the revenues of India:

And whereas the members of Her Majesty's Indian Marine Service are not subject either to the Naval Discipline Act, 1866, or to the Merchant Shipping Act, 1854, and Acts amending it, or to any corresponding law made, enacted, or in force under the authority of the Government of India; and it is expedient that the Governor General of India in Council should have power to make laws for the purpose of maintaining discipline in that service:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Indian Marine Service Act, 1884.

2. The Governor General of India in Council shall have power, subject to the provisions contained in the Indian Councils Act, 1861, as amended by subsequent Acts, at meetings for the purpose of making laws and regulations, to make laws for all persons employed or serving in or belonging to Her Majesty's Indian Marine Service: Provided as follows,

(*a.*) A law made under this section shall not apply to any offence, unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters as defined by this Act:

(*b.*) The punishments imposed by any such law for offences shall be similar in character to and shall not be in excess of the punishments which may at the time of making the law be imposed for similar offences under the Acts relating to Her Majesty's Navy, except that in the case of persons other than Europeans or Americans imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude.

3. For the purposes of this Act the expression "Indian waters" includes the high seas between the Cape of Good Hope on the west and the straits of Magellan on the east, and all territorial waters between those limits.

4. A law made under this Act shall, until the Governor General makes known that he has received a notification of the disallowance thereof by Her Majesty, or until the repeal thereof, be, subject to the provisions of this Act, of the same force and effect as an Act of Parliament, and shall be taken notice of by all courts of justice in the same manner as if it were a public Act of Parliament.

5. Nothing in this Act shall authorise the Governor General in Council, without the previous approval of the Secretary of State for India in Council, to make any law whereby power is given to any court other than the High Courts established under the Act of the session held in the twenty-fourth and twenty-fifth years of Her Majesty, chapter one hundred and four "for establishing High Courts of Judicature in India," to sentence to the punishment of death any of Her Majesty's

natural-born subjects born in Europe, or any child of any such subject.

6. In case a state of war exists between Her Majesty and any foreign power, it shall be lawful for Her Majesty by Proclamation or Order in Council to direct that any vessel belonging to Her Majesty's Indian Marine Service and the men and officers from time to time serving thereon shall be under the command of the senior naval officer of the station where for the time being such ship may be. And while any such vessel is under such command such vessel shall be deemed to all intents a vessel of war of the Royal Navy, and the men and officers from time to time serving in such vessel shall be under such Naval Discipline Act or Acts as may be in force for the time being and subject to such regulations as may be issued by the Lords Commissioners of the Admiralty, with the concurrence of the Secretary of State for India in Council.

CHAP. 39.

Naval Discipline Act, 1884.

ABSTRACT OF THE ENACTMENTS.

Amendment of Part III.

1. *Amendment of* 29 *&* 30 *Vict. c.* 109. *s.* 56 *as to trial of offences by officer in command of a ship.*

Amendment of Part IV.

2. *Amendment of* 29 *&* 30 *Vict. c.* 109. *s.* 58 *as to holding or constitution of courts-martial.*

Amendment of Part V.

3. *Amendment of s.* 70 *as to sentence of penal servitude and imprisonment.*
4. *Amendment of s.* 73 *as to cumulative sentences of imprisonment.*
5. *Amendment of s.* 74 *as to commencement of term of imprisonment.*
6. *Amendment of s.* 81 *as to the Admiralty setting apart buildings and ships as naval prisons.*

Supplemental.

7. *Construction and printing of Naval Discipline Act.*

Repeal, Commencement, and Short Title.

8. *Repeal of Acts, and savings.*
9. *Commencement of Act.*
10. *Short title.*

SCHEDULE.

An Act to amend the Naval Discipline Act, 1866. (28th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of Part III.

1. In section fifty-six of the Naval Discipline Act, 1866, the following enactments shall be substituted for the provisions of that section relating to the trial of an offence by a commanding officer, repealed by this Act, and shall be sub-sections two and three of that section, and sub-section three shall be numbered four.

(2.) Any offence not capital which is triable under this Act, and (except in the cases by this Act expressly provided for) is not committed by an officer, may, under such regulations as the Admiralty from time to time issue, be summarily tried and punished by the officer in command of the ship to which the offender belongs at the time either of the commission or of the trial of the offence, subject to the restriction that the commanding officer shall not have power to award penal servitude or to award imprisonment for more than three months.

(3.) The power by this section vested in an officer commanding a ship may,—

(*a.*) as respects persons on board a tender to the ship, be exercised, when the tender is absent from the ship, by the officer in command of the tender; and

(*b.*) as respects persons on board any boat or boats belonging to the ship, be exercised,

when such boat or boats is or are absent on detached service, by the officer in command of the boat or boats; and

(c.) as respects persons subject to this Act on shore on detached service, or such of those persons as are not for the time being made subject to military law by an order under section one hundred and seventy-nine of the Army Act, 1881, be exercised by the officer in immediate command on shore of those persons.

Amendment of Part IV.

2. In section fifty-eight of the Naval Discipline Act, 1866, the following amendments shall be made:—

(A.) Whereas by sub-section three of section fifty-eight of the Naval Discipline Act, 1866, it is enacted that a court-martial shall not be held unless at least three of Her Majesty's ships, commanded as therein mentioned, are together at the time when such court-martial is held, and it is expedient to reduce the number, therefore

Two shall be substituted for three in sub-section three of section fifty-eight.

(B.) There shall be substituted for sub-section seven of section fifty-eight the following sub-section:—

(7.) No court-martial for the trial of a person below the rank of captain in Her Majesty's navy shall be duly constituted unless the president is a captain or of higher rank, nor, if the person to be tried is of the rank of commander, unless, in addition to the president, two other members of the court are of the rank of commander or of higher rank.

Amendment of Part V.

3. There shall be substituted for sections seventy and seventy-one of the Naval Discipline Act, 1866, the following section, which shall be numbered as section seventy:—

Where a person is in pursuance of this Act convicted by a court-martial, and either is sentenced or has his sentence commuted to penal servitude, such conviction and sentence shall be of the same effect as if such person had been convicted by a civil court in the United Kingdom of an offence punishable by penal servitude and sentenced by that court to penal servitude, and all enactments relating to a convict so sentenced shall, so far as circumstances admit, apply accordingly; and the said convict shall be removed to some prison in which a convict so sentenced by a civil court in the United Kingdom can be confined either permanently or temporarily, and the order of the Admiralty or of the Commander-in-Chief, or of the officer ordering the court-martial by whom such person was convicted, shall be a sufficient warrant for the transfer of the said person to such prison to undergo his sentence according to law, and until he reaches such prison for his detention in naval custody, or in any civil prison or place of confinement.

4. There shall be added at the end of section seventy-three of the Naval Discipline Act, 1866, the following proviso:—

Provided that nothing in this section shall cause a person to undergo imprisonment for any period exceeding two consecutive years, and so much of any term of imprisonment imposed on a person by a sentence in pursuance of this section as would prolong his imprisonment beyond that period shall be deemed to be remitted.

5. There shall be added to section seventy-four of the Naval Discipline Act, 1866, the following sub-sections as sub-sections two, and three thereof:—

(2.) Where, by reason of a ship being at sea or off a place at which there is no proper prison, a sentence of imprisonment cannot be duly executed, then, subject as herein-after mentioned, an offender under sentence of imprisonment may be sent with all reasonable speed to some place at which there is a proper prison in which the sentence can be duly executed, and on arrival there the offender shall undergo his sentence, in like manner as if the date of such arrival were the day on which the sentence was awarded, and that notwithstanding that in the meanwhile he has returned to his duty or become entitled to his discharge; and the term of imprisonment shall be reckoned accordingly, subject however to the deduction of any time during which he has been kept in confinement in respect of the said sentence.

(3.) Where in pursuance of this Act a person is sentenced to imprisonment, the order of the Admiralty or of the Commander-in-Chief, or of the officer ordering the court-martial by which such person was sentenced, or, if he was sentenced by the commanding officer of a ship, the order of such commanding officer, shall be a sufficient warrant for the sending of such person to the place of imprisonment, there to undergo his sentence according to law, and until he reaches such place of imprisonment, for his detention in naval custody, or in any civil prison or place of confinement.

6. There shall be substituted for the portion of section eighty-one of the Naval Discipline Act, 1866, which is repealed by this Act, the following enactment, which shall be sub-section two thereof:—

(2.) The Admiralty shall have the same

power and authority in respect to naval prisons as one of Her Majesty's Principal Secretaries of State has in relation to military prisons under section one hundred and thirty-three of the Army Act, 1881, and that section shall apply as if it were herein re-enacted with the substitution of "the Admiralty" for "a Secretary of State," and of "naval" for "military," and rules and regulations may be made accordingly by the Admiralty.

Supplemental.

7.—(1.) Every enactment and word of this Act which is expressed to be substituted for or added to any portion of the Naval Discipline Act, 1866, shall form part of that Act in the place assigned to it by this Act, and the Naval Discipline Act, 1866, and all Acts, including this Act, which refer thereto shall, after the commencement of and subject to the savings contained in this Act, be construed as if the said enactment or word had been originally enacted in the Naval Discipline Act, 1866, in the place so assigned, and, where it is substituted for another enactment or word, had been so enacted in lieu of that enactment or word; and the expression "this Act," as used in the Naval Discipline Act, 1866, or this Act, shall be construed accordingly.

(2.) A copy of the Naval Discipline Act, 1866, with every such enactment and word inserted in the place so assigned, and with the omission of the parts expressly repealed by this Act or by the Statute Law Revision Act, 1875, and with the sections and sub-sections numbered in manner directed by this Act, shall be prepared and certified by the Clerk of the Parliaments, and deposited with the rolls of Parliament; Her Majesty's printers shall print in accordance with the copy so certified all copies of the Naval Discipline Act, 1866, which are printed after the commencement of this Act.

Repeal, Commencement, and Short Title.

8.—(1.) The Acts mentioned in the schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent in the third column of that schedule mentioned.

(2.) This Act or the repeal enacted by this Act shall not affect anything done or suffered or any right or liability acquired or incurred before the commencement of this Act, and shall not affect any legal proceeding in reference to any such thing, right, or liability, and any such legal proceeding may be instituted, carried on, and completed as if this Act had not passed.

(3.) In the case of any offence committed before the commencement of this Act, if any proceeding for the trial or punishment of the offender has been commenced before the commencement of this Act, such proceeding may be carried on and completed and the offender may be tried and punished as if this Act had not passed, but, save as aforesaid, this Act shall apply to the trial and punishment of a person accused of such offence, and the section substituted for sections seventy and seventy-one of the Naval Discipline Act, 1866, and the addition to section seventy-four of that Act with respect to the warrant for sending a person to a place of imprisonment shall apply to a person sentenced, whether before or after the commencement of this Act.

(4.) Any regulations in force in any naval prison at the commencement of this Act shall continue in force until revoked by regulations made in pursuance of this Act.

9. This Act shall come into force at the expiration of six months from the passing thereof, or at any earlier date from time to time fixed by the Admiralty, and the Admiralty may fix different dates for different stations and places, and the day on which this Act comes into operation on any station or in any place shall as regards that station or place be deemed to be the commencement of this Act.

10. This Act may be cited as the Naval Discipline Act, 1884.

SCHEDULE.

ACTS REPEALED.

A description or citation of a portion of an Act in this Schedule is inclusive of the word section or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
44 Geo. 3. c. 13. -	An Act to prevent the desertion and escape of petty officers, seamen, and others from His Majesty's service, by means or under colour of any civil or criminal process.	The whole Act.
5 Geo. 4. c. 83. -	An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England.	Section sixteen from "other than a person" down to "to England."
29 & 30 Vict. c. 109 -	An Act to make provision for the discipline of the navy.	Section fifty-six from "and any offence" to the end of sub-section two; in section fifty-eight, sub-section seven; section seventy; section seventy-one; section seventy-seven; section eighty-one, from "and all powers and authorities with respect to" to the end of the section; in section eighty-four the date "1866."

CHAP. 40.

Reformatory and Industrial Schools (Manx Children) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title of Act.*
2. *Government of Isle of Man may contract with reformatory or industrial schools in Great Britain for reception of Manx children.*
3. *Manx children may be sent to reformatory or industrial school in Great Britain.*
4. *Definitions.*

An Act for enabling Manx Children to be sent to Reformatory or Industrial Schools in Great Britain.

(28th July 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Reformatory and Industrial Schools (Manx Children) Act, 1884.

2. Where under any Act or Acts of the Legislature of the Isle of Man it is or may be lawful for the justices or a court in the said island to sentence a young person to be sent to a reformatory or industrial school in Great Britain, and provision is made under any such

Act or Acts to the satisfaction of a Secretary of State—

(1.) For the expenses of the conveyance of such young person to the school to which he is sent, and for his reconveyance on his discharge from such school to the Isle of Man; and

(2.) For the expenses of the maintenance of such young person at such school; and

(3.) For the contribution (if any) to be made by the parent, step-parent, guardian, or other person liable to maintain the child so sent, and the mode in which such contribution is to be raised.

The Government of the said Isle may, with the assent of a Secretary of State and with the approval of the Tynwald court, contract with the managers of any reformatory or industrial school in Great Britain for the reception of young persons sentenced to be sent to any such school by justices or a court in the said isle.

3. A young person sentenced as aforesaid in the said Isle to be sent to a reformatory or industrial school in Great Britain may be conveyed in the custody of any constable or other person acting under a warrant issued by any competent justices or court in the Isle of Man, to the school to which he is sentenced to be sent, and he shall during his conveyance to such school be deemed to be in legal custody, both on sea and on land, and when delivered up to the managers of the school to which he is sent he may thenceforth be dealt with in the same manner and be subject to the Reformatory Schools Act or Industrial Schools Acts in the same way as if he had been sent to such school by justices, a magistrate, or a court in the United Kingdom.

4. In the construction of this Act the expression "justices," as applied to the Isle of Man, means two justices or a high bailiff sitting as a court of summary jurisdiction; and the expression "a court," as applied to the Isle of Man, means the court of general gaol delivery, or a judge of the High Court of Justice of the Isle of Man.

The expression "Reformatory Schools Act" means the Reformatory Schools Act, 1866.

The expression "Industrial Schools Acts" means the Industrial Schools Act, 1866, and the Industrial Schools Acts Amendment Act, 1880.

The expression "a Secretary of State" means one of Her Majesty's Principal Secretaries of State.

In the construction of the Reformatory Schools Act and the Industrial Schools Acts for the purposes of this Act—

The expression "young person" includes youthful offender under the Reformatory Schools Act, and "child" under the Industrial Schools Acts.

The expression "judge of assize," or "court of general or quarter sessions," or "circuit court of justiciary," or "sheriff," means the court of general gaol delivery, or a judge of the High Court of Justice of the Isle of Man.

The expressions "sentence" and "sentenced" include "order" and "ordered" as used in the Industrial Schools Acts.

CHAP. 41.

Building Societies Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Construction and short title.*
2. *Definition of word "disputes."*

An Act to amend the Building Societies Act, 1874. (7th August 1884.)

WHEREAS it is expedient to amend the laws relating to building societies:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be construed as one with the Building Societies Act, 1874, and the Building Societies Act, 1875, and the Building Societies Act, 1877, and may be cited as the Building Societies Act, 1884, or, together with the said Acts, as the Building Societies Acts.

2. The word "disputes" in the Building Societies Acts, or in the rules of any society

thereunder, shall be deemed to refer only to disputes between the society and a member, or any representative of a member in his capacity of a member of the society, unless by the rules for the time being it shall be otherwise expressly provided; and, in the absence of such express provision, shall not apply to any dispute between any such society and any member thereof, or other person whatever, as to the construction or effect of any mortgage deed, or any contract contained in any document, other than the rules of the society, and shall not prevent any society, or any member thereof, or any person claiming through or under him, from obtaining in the ordinary course of law any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled: Provided always, that nothing in this Act shall apply to any dispute pending at any time before the passing of this Act between any such society and any member thereof, or other person, which before the passing of this Act shall have been actually referred, or agreed to be referred, to arbitration, or as to which the jurisdiction of any court of law shall have been adjudged to be excluded by a decision of any court of competent jurisdiction in an action or suit between the society and any member thereof or other person.

CHAP. 42.

Sheriff Court Houses (Scotland) Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction and short title.*
3. *Acts may be applied more than once to the same court house or county.*
4. *Representation to be communicated to Chief Commissioner of Works and Treasury.*
5. *Liability of Treasury not to exceed half of estimated cost of construction.*
6. *Repeal of* 23 & 24 *Vict. c.* 79. *s.* 16. *Treasury to pay a fixed annual sum for maintenance.*
7. *Government inspector.*
8. *Liability in case of destruction by fire.*
9. *Court house assessments under Local Acts may be levied with the county general assessment.*

An Act to amend the Sheriff Court Houses Act, 1860.

(7th August 1884.)

WHEREAS it is expedient to amend the Sheriff Court Houses Act, 1860, herein-after called the principal Act:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Sheriff Court Houses (Scotland) Amendment Act, 1884.

2. The principal Act, and an Act passed in the twenty-ninth and thirtieth years of the reign of Her present Majesty, intituled "An "Act to amend certain provisions of the "Sheriff Court Houses (Scotland) Act, 1860," and this Act, shall be read and construed together, and may be cited as the Sheriff Court Houses (Scotland) Acts, 1860 to 1884.

3. Where a representation is made to the Secretary of State under section three of the principal Act, it shall not be any objection to such representation that a previous representation with respect to the same court house or with respect to the court house accommodation in the same county has been made and proceeded with.

4. Before the Secretary of State intimates his opinion to the Commissioners of Supply on any representation made to him under the principal Act in terms of section four of the said Act, he shall transmit such representation to the First Commissioner of Her Majesty's Works and Public Buildings for his report thereon, and on receiving such report shall transmit it to the Commissioners of Her Majesty's Treasury for their observations.

5. Whereas it is provided by section fifteen of the principal Act that it shall be lawful for the Commissioners of Her Majesty's Treasury to pay one half of the total expense of the erection or improvement of any court house under the provisions of the said Act; it is

hereby declared that such payment shall be limited to one half of the estimated expense according to the estimate approved of by the said Commissioners in terms of section eleven of the said Act, and any excess over such estimate shall be defrayed out of the court house assessments, unless such excess has been expressly sanctioned by the said Commissioners, in which case one half thereof shall be paid by them: Provided that in case of any court house regulated by a special Act or Acts, such excess may be defrayed in the manner provided in such Act or Acts for defraying the expense of such court house.

6. Section sixteen of the principal Act, providing that the expenses of managing and keeping in repair the court houses erected or improved under the provisions of the said Act shall be paid by the Commissioners of Her Majesty's Treasury, shall be repealed, and from and after the passing of this Act it shall shall be lawful for the Commissioners of Her Majesty's Treasury to contribute towards the expense of maintaining, managing, and keeping in repair, and of cleaning, lighting, and warming any court house within the meaning of the principal Act, whether erected prior or subsequently to the date of the said Act, including the salaries or wages of porters, hall-keepers, and other incidental annual disbursements, out of moneys to be provided by Parliament, such fixed annual sum as may from time to time appear to them to be sufficient for that purpose, having regard to the average of the amounts actually disbursed under the said several heads during the past three years if the court has been opened so long for the despatch of business, and to the average expenditure in other court houses of similar extent, and to the age and existing state of repair of the buildings.

If there is any excess of expenditure under the said several heads over such fixed annual sum, such excess, unless specially sanctioned by the Commissioners of Her Majesty's Treasury, shall be defrayed by the county (or, in the case of the county of Lanark, by the district of the county, as the same is divided by the principal Act) and the burgh or burghs situated therein, in the proportion of their respective valuations for the time being according to the valuation roll, and, in the case of the county or district, the same shall be paid out of the county general assessment levied therein, and, in the case of the burgh or burghs, out of any police assessment levied therein: Provided that in the case of any court house regulated by a special Act or Acts, such excess shall be defrayed in the manner provided in such Act or Acts for defraying the expense of such court house.

7. It shall be lawful for the First Commissioner of Works to depute an officer from time to time to inspect any court house towards the cost or maintenance of which a contribution is made from public funds, in order to see that the money is properly expended and the buildings are kept in proper repair; and if it shall appear to him that any repairs require to be executed, the Secretary of State shall have power, on receiving his report to that effect, to call upon the Commissioners of Supply or the persons in whom such court house is vested under any special Act or Acts to execute the same.

8. If any court house erected or improved under the Sheriff Court Houses Acts is destroyed or injured by fire after its completion, the Commissioners of Supply, or the persons in whom such court house is vested under any special Act or Acts, shall be bound to re-erect and restore the same, if required to do so by the Secretary of State, and the provisions of the Sheriff Court Houses (Scotland) Acts, 1860 to 1884, and any special Act or Acts relating to the court house so destroyed or injured, shall extend and apply to its re-erection or restoration in the same manner as if it were a court house to be erected or improved under the provisions of the said Acts.

9. The Commissioners of Supply of any county authorised by any Local or Private Act of Parliament to impose any assessment for the purposes of or with reference to any court house or buildings for the accommodation of the sheriffs and justices of the peace, and for meetings of the Commissioners of Supply, may, notwithstanding anything in such Local or Private Act, impose, levy, and collect such assessment at the same time, and in the same manner, as the county general assessment.

CHAP. 43.

Summary Jurisdiction Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Repeal of obsolete punishments for nonpayment of fines and other sums of money.*
4. *Repeal of Acts in schedule.*
5. *Removal of doubts as to application of Summary Jurisdiction Acts.*
6. *Application of provisions of* 42 & 43 *Vict. c.* 49. *respecting appeals to appeals under prior Acts.*
7. *Removal of doubt as to* 42 & 43 *Vict. c.* 49. *s.* 50.
8. *Extension of* 42 & 43 *Vict. c.* 49. *s.* 30.
9. *Removal of doubts as to effect of* 45 & 46 *Vict. c.* 50. *s.* 227. *on* 42 & 43 *Vict. c.* 49. *s.* 38.
10. *Saving for the recovery of poor rates, &c.*
11. *Recovery of payments certified by district auditors.*
12. *Effect of forms.*
SCHEDULE.

An Act to repeal divers Enactments rendered unnecessary by the Summary Jurisdiction Acts and other Acts relating to Proceedings before Courts of Summary Jurisdiction, and to make further provision for the uniformity of Proceedings before those Courts.

(7th August 1884.)

WHEREAS the Summary Jurisdiction Acts regulate the procedure before courts of summary jurisdiction and on appeals from those courts to courts of quarter sessions, and it is expedient to provide for uniformity of procedure in all such cases:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Summary Jurisdiction Act, 1884.

2. This Act shall come into operation on the first day of December one thousand eight hundred and eighty-four.

3. Whereas the Summary Jurisdiction Acts provide for the imprisonment of a person for the nonpayment in certain cases of a sum of money adjudged to be paid by the conviction or order of a court of summary jurisdiction, and it is expedient to repeal so much of any enactment as provides the punishment of whipping or any punishment other than imprisonment, with or without hard labour, provided for such nonpayment: Be it therefore enacted that—

So much of any Act as enacts that a person on nonpayment of a sum of money adjudged to be paid by the conviction or order of a court of summary jurisdiction in England shall be liable to be whipped or to any other punishment than imprisonment, with or without hard labour, is hereby repealed.

4. The Acts contained in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

Provided that—

(1.) Where an enactment extends beyond England that enactment shall be repealed only as regards England; and

(2.) The expression in the said schedule "conviction or order of a court of summary jurisdiction" shall mean a conviction or order made in pursuance of the Summary Jurisdiction Acts; and

(3.) This repeal shall not revive any enactment repealed by any of the repealed Acts, nor shall it affect—

(*a.*) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or

(*b.*) Any legal proceeding or appeal commenced, or any writ, warrant, or instrument made or issued before the commencement of this Act;

and any such legal proceeding, appeal, writ, warrant, and instrument may be carried on and executed as if this Act had not passed.

A reference in any Act of Parliament or other document to any enactment repealed by this Act, whether incorporating or applying such enactment or otherwise, shall be construed to refer to the corresponding enactment in the Summary Jurisdiction Acts, and

so far as there is no such corresponding enactment shall be repealed.

5. Whereas doubts may arise as to whether the Summary Jurisdiction Acts apply, or will, after the repeal enacted by this Act takes effect, apply to the proceedings before justices referred to in the sections mentioned in the third column of the schedule to this Act, and it is expedient to remove such doubts: Be it therefore enacted that—

The repeal enacted by this Act shall not take away any jurisdiction of any justices to act summarily in any matter referred to in an enactment hereby repealed, and the Summary Jurisdiction Acts shall, so far as is consistent with the tenor thereof, apply to every proceeding before justices as to which the procedure is wholly or partly repealed by this Act in substitution for the procedure so repealed.

And for the further removal of doubts it is hereby declared that where by virtue of the repeal enacted by this Act or otherwise any statute authorising the infliction by any justice or justices of a penalty or fine, either as a sole punishment or as an alternative punishment for imprisonment, provides no method for the recovery of such penalty or fine, sections nineteen and twenty-one of the Summary Jurisdiction Act, 1848, as amended by section twenty-one of the Summary Jurisdiction Act, 1879, shall apply to the recovery of such penalty or fine.

6. Where a person is authorised by any Act passed before the commencement of the Summary Jurisdiction Act, 1879, to appeal from the conviction or order of a court of summary jurisdiction made in pursuance of the Summary Jurisdiction Acts, or from the refusal to make any conviction or order in pursuance of those Acts, to a court of general or quarter sessions, he shall after the passing of this Act appeal to such court subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879, with respect to an appeal to a court of general or quarter sessions.

7. Whereas by section fifty of the Summary Jurisdiction Act, 1879, it is enacted that the expression "court of summary jurisdiction" shall in that Act and any future Act mean "any justice or justices of the peace or other "magistrate by whatever name called to whom "jurisdiction is given by or who is or are "authorised to act under the Summary Juris-"diction Acts or any of such Acts."

And whereas doubts have arisen as to whether the said section extends to such justice, justices, or magistrate when acting under some Act other than the Summary Jurisdiction Acts, and it is expedient to remove such doubts: Be it therefore enacted as follows:

It is hereby declared that the above recited definition of court of summary jurisdiction in section fifty of the Summary Jurisdiction Act, 1879, includes such justice, justices, or magistrate as therein mentioned, whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his or their commission or by the common law.

8. Whereas doubts have arisen whether under the thirtieth section of the Summary Jurisdiction Act, 1879, the justices or council therein mentioned have power to provide more than one petty sessional court-house, and it is expedient that such doubts should be removed: Be it therefore enacted as follows:

It is hereby declared that the power of the thirtieth section of the Summary Jurisdiction Act, 1879, given to the justices or council therein mentioned to provide a petty sessional court-house shall be deemed to extend to providing more than one such petty sessional court-house if the justices or council shall think it necessary or expedient so to do.

And for the further removal of doubts it is hereby declared that a petty sessional court-house or occasional court-house for the use of the justices of any county may be outside the limits of the petty sessional division for which such court-house is provided or appointed, and may be either in the said county, or in any adjoining county or borough, and for the purpose of the jurisdiction of any justices acting in such court-house the same shall be deemed to be within the county and the petty sessional division for which such justices act.

9. Nothing in section two hundred and twenty-seven of the Municipal Corporations Act, 1882, shall be taken to have repealed section thirty-eight of the Summary Jurisdiction Act, 1879.

10. Nothing in this Act shall alter the procedure for the recovery of or any remedy for the nonpayment of any poor rate, or of any rate or sum the payment of which is not adjudged by the conviction or order of a court of summary jurisdiction.

11. The payment of any sum certified by a district auditor to be due in accordance with the Poor Law Amendment, Act, 1844, and the Acts amending the same, or with any other Act may, together with the costs of the proceedings for the recovery thereof, be enforced in like manner as if it were a sum due in respect of the poor rate.

12. Whereas by section twenty-nine of the Summary Jurisdiction Act, 1879, the Lord Chancellor is authorised from time to time to make rules in relation to the forms to be used under the Summary Jurisdiction Acts or any of them, and to annul and to add to forms in relation to summary proceedings contained in other Acts, and doubts have arisen with respect to the effect of the forms altered by such rules, and it is expedient to remove such doubts: Be it therefore enacted that—

A form authorised by any rules for the time being in force in pursuance of the said section shall be of the same effect as if it were contained in the Summary Jurisdiction Act, 1848, or in any other Act to which the form is made applicable.

SCHEDULE.

ENACTMENTS REPEALED.

This schedule down to the year 1868 refers to the Statutes, Revised Edition, published by authority under the direction of the Statute Law Committee.

A description or citation of a portion of an Act in this schedule is inclusive of the word, section, or other part first and last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
3 Will. & Mar. c. 11. -	An Act for the better explanation and supplying the defects of the former laws for the settlement of the poor.	Section nine from "to be levied" to end of section.
7 & 8 Will. 3. c. 6. -	An Act for the more easy recoverie of small tythes.	Section two from "and alsoe" to end of section. Section three. Section four. Section seven from "to be held" to "just and reasonable." Section nine. Section ten, and Section twelve.
1 Anne, Stat. 2, c. 22. -	An Act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom.	In section one the words "publicly whipped and," and Section four from "which shall be held" to end of section.
9 Geo. 1. c. 27. - -	An Act for preventing journeymen shoemakers selling, exchanging, or pawning boots, shoes, slippers, cut leather, or other materials for making boots, shoes, or slippers, and for better regulating the said journeymen.	Section one from "and upon the neglecting" to "offence shall be committed," and from "nor less than fourteen days" to end of section. Section two from "or else be subject" to end of section, and Section five from "to be holden" to "appeal."
12 Geo. 1. c. 34. -	An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages.	Section two from "by warrant" to "respective jurisdictions," and from "for any time" to end of section. Section three from "and for want of sufficient" to end of section, and Section five from "to be holden" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
11 Geo. 2. c. 19. -	An Act for the more effectual securing the payment of rents and preventing frauds by tenants.	Section four from "without bail" to end of section, and Section five from "to be held" to end of section.
12 Geo. 2. c. 28. -	An Act for the more effectual preventing of excessive and deceitful gaming.	Section five from "for the said county" to end of section. Section six from "be set aside" to "conviction or judgment", and Section eight.
13 Geo. 2. c. 8. - -	An Act to explain and amend an Act made in the first year of the reign of Her late Majesty Queen Anne, intituled "An "Act for the more effectual "preventing the abuses and "frauds of persons employed "in the working up the woollen, linen, fustian, cotton, "and iron manufactures of "this kingdom," and for extending the said Act to the manufactures of leather.	In section one, the words "whipped and", and from "for "any time not exceeding three "months" to end of section. Section four from "and shall be there likewise" to "order and direct", and from "for any "time not exceeding three "months" to end of section, and Section nine from "to be held" to end of section.
15 Geo. 2. c. 27. -	An Act for the more effectual preventing any cloth or woollen goods remaining upon the rack or tenters, or any woollen yarn or wooll left out to dry, from being stolen or taken away in the nighttime.	Section one from "and in default of payment" to "they pay the same", and Section two from "which shall happen" to end of section.
19 Geo. 2. c. 21. -	An Act more effectually to prevent profane cursing and swearing.	Section two. Section five. Section six. Section seven, the words "for the space of one month". Section eight, from "in the words and form" down to "day and year aforesaid", and the word "said form and" and from "and the said justice" to the end of the section. Section ten from "and that all charges" to end of section, and Section fourteen.
22 Geo. 2. c. 27. -	An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, and silk manufactures; and for preventing unlawful combinations of journeymen dyers and journeyman hot pressers, and of all persons employed in the said several manufactures, and for the better payment of their wages.	Section one from "there to be "kept to hard labour for the "space" to end of section. Section two from "and in case the said forfeiture" to end of section. Section six from "notice in writing" to end of section. Section eight, and So much of section twelve as applies any enactment repealed by this Act.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
27 Geo. 2. c. 7. - -	An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of clocks and watches.	Section one from "unless such forfeiture" to the first "respectively committed", and from "for any time not exceeding three months" to end of section. Section two from the first "unless the said forfeiture" to the first "appear reasonable", and from "for any time not exceeding three months," to "appear reasonable." Section three from "the person so convicted" to end of section. Section four from "in the form and words" down to "day and year aforesaid," the words "said form and" and from "and the said justice" to the end of the section, and Section five.
5 Geo. 3. c. 51. - -	An Act for repealing several laws relating to the manufacture of woollen cloth in the county of York, and also so much of several other laws as prescribes particular standards of width and length of such woollen cloths; and for substituting other regulations of the cloth trade within the West Riding of the said county, for preventing frauds in certifying the contents of the cloth, and for preserving the credit of the said manufacture at the foreign market.	In section eleven the words "nor less than forty shillings". In section twenty-four the words "for any time not exceeding three months", and Section twenty-five from "to be held" to end of section.
14 Geo. 3. c. 25. -	An Act for the more effectual preventing frauds and embezzlements by persons employed in the woollen manufactory.	Section seven from "to be held" to end of section. Section eight, and Section nine.
14 Geo. 3. c. 44. -	*An Act the title of which begins with the words*—"An Act to amend an Act" *and ends with the words*—"payment of their wages."	Section two, the words "nor less than five shillings". Section three. Section four, and In section five, the words "at the time of such conviction", and from "abide the order of" down to "adjudged by the justices of such sessions", and from "and may affirm" to "all intents and purposes".
15 Geo. 3. c. 14. -	*An Act the title of which begins with the words*—"An Act to explain and amend," *and ends with the words* —"payment of their wages."	The whole Act.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
17 Geo. 3. c. 11. -	An Act for more effectually preventing frauds and abuses committed by persons employed in the manufactures of combing wool, worsted, yarn, and goods made from worsted in the counties of York, Lancaster, and Chester.	So much of section twelve as applies any enactment repealed by this Act. Section twenty. Section twenty-one from "to be held for the county" to the end of the section. Section twenty-two, down to "judgment be affirmed and", and Section twenty-three.
17 Geo. 3. c. 29. -	An Act for the more effectual prevention of the manufacturing of ash, elder, sloe, and other leaves in imitation of tea, and to prevent frauds in the revenue of excise in respect to tea.	Section one from "there to remain" to end of section. Section two from "there to remain" to end of section. Section three from "there to remain" to end of section. Section eight, and Section nine, from "shall be certified by" down to "which said conviction."
17 Geo. 3. c. 55. -	An Act for the better regulating the hat manufactory.	Section three, and Section eight from "to be held" to end of section.
17 Geo. 3. c. 56. -	An Act for amending and rendering more effectual the several laws now in being for the more effectual preventing of frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures, and also for making provisions to prevent frauds by journeymen dyers.	Section three from "for any time" to end of section. Section four from "for any time" to end of section. Section fourteen from "all which said respective forfeitures" to "adjudged guilty," and from "and if no sufficient distress" to end of section. Section seventeen from "to remain for any time" to end of section. Section twenty from "to be holden" to end of section. Section twenty-one, and Section twenty-two from "and the justices before whom" to the end of the section.
24 Geo. 3. sess. 2. c. 3. -	An Act for more effectually preventing frauds and abuses committed by persons employed in the manufactures of combing wool, worsted yarn, and goods made from worsted, in the county of Suffolk.	Section twenty-two. Section twenty-three from "to be held" to end of section. Section twenty-four, down to "judgment be affirmed and", and Section twenty-five.
25 Geo. 3. c. 40. -	An Act for more effectually preventing frauds and abuses committed by persons employed in the manufactures of combing wool, worsted yarn and goods made from worsted, in the counties of Bedford, Huntingdon, Northampton, Leicester, Rutland, and Lincoln, and the Isle of Ely.	Section thirty. Section thirty-one from "to be held" to end of section. Section thirty-two down to "judgment be affirmed and", and Section thirty-three.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
26 Geo. 3. c. 71.	An Act for regulating houses and other places kept for the purpose of slaughtering horses.	Section five from "to be raised by distress" to end of section. Section ten the words "nor less than ten pounds" and from "for any time" to end of section. Section eleven. Section thirteen, the words "nor less than ten pounds", and from "there to remain" to end of section. Section fifteen, the words "nor less than ten pounds", and Section sixteen.
31 Geo. 3. c. 56.	An Act more effectually to prevent abuses and frauds committed by persons employed in the manufactures of combing wool and worsted yarn in the county of Norfolk and city of Norwich and county of the said city.	Section twenty-six from "for any term" to end of section. Section twenty-seven. Section twenty-eight from "to be held" to "judgment be affirmed", and Section twenty-nine.
32 Geo. 3. c. 56.	An Act for preventing the counterfeiting of certificates of the characters of servants.	Section six, the words "the sum of ten shillings for," and from "without bail" to end of section. Section nine, and Section ten from "to be held" to "all intents and purposes".
32 Geo. 3. c. 57.	An Act for the further regulation of parish apprentices.	Section eleven, Section twelve, and Section thirteen.
33 Geo. 3. c. 55.	An Act to authorise justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates.	Section one from "and by warrant" to "offender or offenders", and from "to be held" to end of section, and Section two.
36 Geo. 3. c. 60.	An Act to regulate the making and vending of metal buttons, and to prevent the purchasers thereof from being deceived in the real quality of such buttons.	Section eight from "and to award" to end of section. Section nine from "upon giving" to "affirmed", and from "for the county" to end of section. Section ten from "Provided that such penalties". Section eleven, Section twelve, and Section thirteen.
36 Geo. 3. c. 85.	An Act for the better regulation of mills.	Section eight from "and in case" to "paid and satisfied", and from "upon giving security" to "judgment shall be affirmed", and from "for the county" to "themselves shall seem meet", and Section ten.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
36 Geo. 3. c. 88. -	An Act to regulate the buying and selling of hay and straw, and for repealing so much of two Acts made in the second year of the reign of King William and Queen Mary, and in the thirty-first year of the reign of King George the Second, as relate to the buying and selling of hay and straw within the limits therein mentioned.	Section twenty-two from "without bail" to end of section. Section twenty-six from "to summon the person" down to "authorised and required", and from "to be ascertained" to end of section. Section twenty-eight, to "person shall reside", and from "and if it shall" to end of section, and Section twenty-nine from "of the county" to "such appeal with effect."
39 Geo. 3. c. 79. -	An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices.	Section eight from "and in case such sum" to "three calendar months". Section nine from "so as such punishment" to end of section. Section thirty-five from "and in "case such last-mentioned "penalty" to end of section. In section thirty-eight, the words "convictions by any justice or "justices of the peace for "offences against this Act, "and", and Form of conviction in schedule.
39 & 40 Geo. 3. c. 77. -	An Act for the security of collieries and mines, and for the better regulation of colliers and miners.	Section eight, and Section ten from "to be held in and for" to "as they shall judge reasonable".
41 Geo. 3. c. 109. U.K. -	An Act for consolidating in one Act certain provisions usually inserted in Acts of Inclosure; and for facilitating the mode of proving the several facts usually required on the passing of such Acts.	Section thirty-nine from "for which purpose" to "reasonable costs."
42 Geo. 3. c. 46. -	An Act to require overseers and guardians of the poor to keep a register of the several children who shall be bound or assigned by them as apprentices; and to extend the provisions of an Act passed in the twentieth year of the reign of his present Majesty to the binding of apprentices by houses of industry or establishments for the poor which have been authorised so to do by subsequent Acts.	Section two from "to be recovered" to "selling such distress", and from "and in case sufficient distress" to end of section. Section four, and Section seven, the word "first", and from "to be holden" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
42 Geo. 3. c. 56.	An Act to repeal an Act passed in the twenty-fifth year of the reign of His present Majesty for granting stamp duties on certain medicines, and for charging other duties in lieu thereof; and for making effectual provision for the better collection of the said duties.	Section twenty-five from "at any time" to "paid and satisfied", from "upon giving" to the first "affirmed", and from "for the county" to end of section. Section twenty-six; and Section twenty-seven.
42 Geo. 3. c. 119.	An Act to suppress certain games and lotteries not authorised by law.	Section six from "for any space of time" to end of section.
44 Geo. 3. c. 54.	An Act to consolidate and amend the provisions of the several Acts relating to corps of yeomanry and volunteers in Great Britain; and to make further regulations relating thereto.	Section forty-five from "and if such offender" to end of section, and Section fifty-two from "to be levied" to "two months."
48 Geo. 3. c. 75.	An Act for providing suitable interment in churchyards or parochial burial grounds in England for such dead human bodies as may be cast on shore from the sea in cases of wreck or otherwise.	Section eight from "if not paid on conviction" to the first "such penalties and forfeitures", and from "and in case sufficient distress" to end of section. Section nine. Section ten, the word "first", and from "to be holden" to "judge proper". Section eleven.
52 Geo. 3. c. 155.	An Act to repeal certain Acts and amend other Acts relating to religious worship and assemblies, and persons teaching or preaching therein.	Section fifteen from "and in case" to end of section, and Section sixteen from "holden next" to "prefer such appeal."
54 Geo. 3. c. 159.	An Act for the better regulation of the several ports, harbours, roadsteads, sounds, channels, bays, and navigable rivers in the United Knigdom, and of His Majesty's docks, dockyards, arsenals, wharfs, moorings, and stores therein; and for repealing several Acts passed for that purpose.	Section twenty-one from "there to remain" to end of section. Section twenty-three from "according to the following form" down to "division or place". Section twenty-four, and Section twenty-six from "holden" to end of section.
55 Geo. 3. c. 137.	*An Act the title of which begins with the words,*—"An Act to prevent", *and ends with the words,* — "relating to the poor".	Section eight from "in the following form" down to "first above written", and Section nine from "to be held" to end of section.
56 Geo. 3. c. 139.	An Act to regulate the binding of parish apprentices.	Section fourteen. Section fifteen. Section sixteen, and Section seventeen from "to be holden" to "shall think fit", so far as relates to an appeal against a conviction or order of a court of summary jurisdiction.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
57 Geo. 3. c. 19. -	An Act for the more effectually preventing seditious meetings and assemblies.	Section thirty from "and in case such last-mentioned penalty" to the first "three calendar months". Section thirty-four from "convictions" to "against this Act, and", and Forms I. and III. in Schedule.
57 Geo. 3. c. 93. -	An Act to regulate the costs of distresses levied for payment of small rents.	Section two from "and in case of nonpayment" to end of section. Section three. Section four to "original complaint". Section five and the Forms of order in schedule.
59 Geo. 3. c. 7. -	An Act to regulate the cutlery trade in England.	Section eight from "and all such justices" to end of section. Section nine from "upon giving" to "affirmed", and from "for the county" to end of section. Section ten from "provided that" to end of section. Section eleven, Section twelve, Section thirteen, and Section fifteen.
3 Geo. 4. c. 126. -	An Act to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England.	Section one hundred and thirty-eight. Section one hundred and forty-one from beginning of section to "sooner paid and satisfied". Section one hundred and forty-four so far as relates to a proceeding before a court of summary jurisdiction, and The forms numbered 17, 18, 19, 20, 21, 22 in the schedule.
4 Geo. 4. c. 60. -	An Act for granting His Majesty a sum of money to be raised by lotteries.	Section thirty-eight, and Section sixty-seven, the words "nor less than one calendar month", and from "and any such adjudication" to "et cetera".
4 Geo. 4. c. 80. -	*An Act the title of which begins with the words*—"An Act to consolidate", *and ends with the words*, — "registered in India."	Section twenty-nine; and Section thirty.
4 Geo. 4. c. 95. -	An Act to explain and amend an Act passed in the third year of the reign of His present Majesty, to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England.	Section eighty-three, and Section eighty-seven from "to be held" to "intents and purposes", and from "Provided always, that in case" to "determined", so far as relates to an appeal against a conviction or order of a court of summary jurisdiction.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
5 Geo. 4. c. 83. - -	An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England.	Section seven. Section eleven from "and in case such offender" to end of section. Section fourteen from "for the county" to end of section, and Section seventeen.
6 Geo. 4. c. 50. - -	An Act for consolidating and amending the laws relative to jurors and juries.	Section fifty-six, and Section fifty-seven from "and that where any distress" to the end of the section.
9 Geo. 4. c. 69. - -	An Act for the more effectual prevention of persons going armed by night for the destruction of game.	Section three. Section four so far as relates to an offence punishable upon summary conviction. Section five. Section six from "which shall be holden" to end of section; and Section seven from "and no warrant" to end of section.
1 & 2 Will. 4. c. 22. -	An Act to amend the laws relating to hackney carriages, and to waggons, carts, and drays used in the Metropolis; and to place the collection of the duties on hackney carriages and on hawkers and pedlars in England under the Commissioners of Stamps.	Section twenty-seven from "there to remain" to end of section. Section fifty-six, the words "for "any time not exceeding two "calendar months". Section sixty-five and Schedule D. Section sixty-nine, and Section seventy from "provided that" to end of section.
1 & 2 Will. 4. c. 32. -	An Act to amend the laws in England relative to game.	Section thirty-eight from "and for any term" to end of section. Section thirty-nine. Section forty. Section forty-one from "and that where" to end of section. Section forty-three. Section forty-four from "to be holden" to end of section, and Section forty-five from "and that no warrant" to end of section.
1 & 2 Will. 4. c. 37. -	An Act to prohibit the payment in certain trades of wages in goods, or otherwise than in the current coin of the realm.	In section nine the words "nor less than five pounds". Section ten from "and in case of a second offence" to "court and jury". Section eleven. Section twelve. Section fifteen. Section sixteen. Section seventeen from "and no warrant of distress" to end of section, and Schedule.
1 & 2 Will. 4. c. 41. -	An Act for amending the laws relative to the appointment of special constables, and for the better preservation of the peace.	Section sixteen to "such distress; and" Section seventeen, and Section eighteen from "and that no warrant" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
2 & 3 Will. 4. c. 120. -	An Act to repeal the duties under the management of the Commissioners of Stamps, and on horses let for hire in Great Britain, and to grant other duties in lieu thereof, and also to consolidate and amend the laws relating thereto.	Section one hundred and three from "and it shall be lawful" to "paid and satisfied", and from "for the county" to "affirmed on the hearing of such appeal". Section one hundred and five from "provided that" to end of section. Section one hundred and eight. Section one hundred and ten. Section one hundred and eleven. Section one hundred and thirteen and Schedule B.
3 & 4 Will. 4. c. 90. -	An Act to repeal an Act of the eleventh year of His late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof.	Section sixty-two, and Section sixty-three from "who are hereby" to "seized and distrained", from "it shall be lawful" to "otherwise, but", and from "without bail" to end of section.
4 & 5 Will. 4. c. 76. -	An Act for the amendment and better administration of the laws relating to the poor in England and Wales.	Section ninety-two from "or house of correction" to end of section. Section ninety-three from "or "house of correction" to "unless such penalty shall be "sooner paid." Section one hundred and two, and Section one hundred and three from "either of which court of sessions" to end of section.
5 & 6 Will. 4. c. 50. -	An Act to consolidate and amend the laws relating to highways in that part of Great Britain called England.	Section seventy-five from "for any time" to end of section. Section ninety-seven. Section one hundred and one. Section one hundred and two. Section one hundred and three from "by warrant under" to "nulla bona returned thereon" and from "for any term" to "paid and satisfied". Section one hundred and four. Section one hundred and five from "to be held" to end of section so far as regards an appeal from a conviction or order of a court of summary jurisdiction, and The forms numbered 20, 21, 22, 23, 24, 25 in the schedule.
6 & 7 Will. 4. c. 11. -	An Act for the registration of aliens, and to repeal an Act passed in the seventh year of the reign of His late Majesty for that purpose.	Section ten from "prosecuted within six" to "offences shall be", and from "for any time" to "twenty pounds".

Year and Chapter.	Title or Short Title.	Extent of Repeal.
6 & 7 Will. 4. c. 37. -	An Act to repeal the several Acts now in force relating to bread to be sold out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange; and to provide other regulations for the making and sale of bread, and for preventing the adulteration of meal, flour, and bread beyond the limits aforesaid.	In section eight the words "nor less than five pounds" and "for "any time not exceeding six "calendar months". In section nine from "nor less than five pounds" to end of section. Section twelve, the words "nor less than forty shillings," and "for any time not exceeding "six calendar months." Section thirteen from "nor less than ten days" to end of section. Section seventeen from "which warrant such magistrate" to "recognizance or otherwise", and from "and the other moiety" to end of section. Section eighteen. Section nineteen. Section twenty. Section twenty-one. Section twenty-two. Section twenty-three. Section twenty-four from "and where any distress" to end of section, and Section twenty-five from "the "person or persons so con-"victed" to end of section, and Section twenty-six.
6 & 7 Will. 4. c. 86. -	An Act for registering births, deaths, and marriages in England.	Section forty-six from "which shall be holden" to end of section, and Section forty-seven from "and no warrant" to end of section.
7 Will. 4. & 1 Vict. c. 36.	An Act for consolidating the laws relative to offences against the Post Office of the United Kingdom, and for regulating the judicial administration of the Post Office laws, and for explaining certain terms and expressions employed in those laws.	Section eleven. Section thirteen from "and any such justice" to "sooner paid," and from "for the county" to "affirmed on the hearing of such appeal." Section fourteen from "provided that" to end of section. Section seventeen. Section nineteen. Section twenty. Section twenty-one. Section twenty-two, and Section forty-five and Schedule.
2 & 3 Vict. c. 71. -	An Act for regulating the police courts in the metropolis.	Section forty-four. Section forty-five. Section forty-eight. Section fifty from "to be holden" down to "by the last-mentioned justices awarded".

Year and Chapter.	Title or Short Title.	Extent of Repeal.
3 & 4 Vict. c. 50. -	An Act to provide for keeping the peace on canals and navigable rivers.	Section fifty-one, so far as relates to a conviction or order. Section fifteen from "for a term" to "recovery thereof." Section sixteen. Section seventeen from "and that no warrant" to end of section, and Section nineteen from "to be holden" to "by the last-mentioned justices awarded".
3 & 4 Vict. c. 84. -	An Act for better defining the powers of justices within the Metropolitan police district.	Section eight from "and when the information" to end of section, and Schedule.
3 & 4 Vict. c. 85. -	An Act for the regulation of chimney sweepers and chimneys.	Section ten. Section eleven from "which shall be holden" to "process for enforcing such judgment", and Section twelve from "and no warrant" to end of section.
3 & 4 Vict. c. 97. -	An Act for regulating railways -	Section thirteen from "for such period" to end of section, and Section sixteen from "for any term" to end of section.
4 & 5 Vict. c. 30. -	An Act to authorise and facilitate the completion of a survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man.	Section eight from "and not less than" to end of section. Section eleven from "and not less than" to end of section, and Section thirteen from "to them for that purpose exhibited" to "paid or satisfied".
5 & 6 Vict. c. 100. -	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.	Section eight from "and if the amount of such penalty" to the end of the Form of Conviction, and Section thirteen.
5 & 6 Vict. c. 109. -	An Act for the appointment and payment of parish constables.	Section twenty-four.
6 & 7 Vict. c. 30. -	An Act to amend the law relating to pound-breach and rescue in certain cases.	Section one from "for any time" to "sooner paid". Section three and Section four.
6 & 7 Vict. c. 40. -	An Act to amend the laws for the prevention of frauds and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures, and for the further securing the property of the manufacturers and the wages of the workmen engaged therein.	Section two from "and in default" to "over to the person convicted", and from "for any term" to end of section. Section eleven from "and in default" to "over to the person convicted", and from "for any term" to end of section. Section twenty from "for any term" to end of section. Section twenty-two. Section twenty-three. Section twenty-four from "and that" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
		Section twenty-seven from "for any term not exceeding two" to end of section. Section twenty-eight. Section twenty-nine from "which shall be held" to end of section, and Section thirty from "and that no warrant" to end of section.
6 & 7 Vict. c. 68. -	An Act for regulating theatres -	Section nineteen from "by the oath or oaths" to end of section.
7 & 8 Vict. c. 101. -	An Act for the further Amendment of the Laws relating to the Poor in England.	Section four from "if within twenty-four hours" down to "some one justice of the peace", and from "to be holden after" to the end of the section.
7 & 8 Vict. c. 87. -	An Act to amend the law for regulating places kept for slaughtering horses.	Section seven from "or prison" to end of section, and Section nine from "to be holden" to "by the last-mentioned justices awarded".
8 & 9 Vict. c. 10. -	An Act to make certain Provisions for Proceedings in Bastardy.	Section three.
8 & 9 Vict. c. 16. -	The Companies Clauses Consolidation Act, 1845.	Section one hundred and forty-seven from "and on complaint" to end of section. Section one hundred and forty-eight. Section one hundred and forty-nine. Section one hundred and fifty-three. Section one hundred and fifty-five, so far as relates to any matter to which the Summary Jurisdiction Acts apply. Section one hundred and fifty-seven. Section one hundred and fifty-nine from "for the county" to the end of the section, and Schedule G.
8 & 9 Vict. c. 18. -	The Lands Clauses Consolidation Act, 1845.	Section one hundred and thirty-six from "and on complaint" to end of section. Section one hundred and thirty-seven. Section one hundred and forty-two. Section one hundred and forty-three, so far as relates to any matter to which the Summary Jurisdiction Acts apply. Section one hundred and forty-four.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
		Section one hundred and forty-six from "for the county" to end of section, and Schedule (C.)
8 & 9 Vict. c. 20. -	The Railways Clauses Consolidation Act, 1845.	Section one hundred and forty-five from "and on complaint" to end of section. Section one hundred and forty-six. Section one hundred and forty-seven. Section one hundred and fifty-one. Section one hundred and fifty-three so far as relates to any matter to which the Summary Jurisdiction Acts apply. Section one hundred and fifty-five. Section one hundred and fifty-seven from "for the county" to end of section and Schedule.
8 & 9 Vict. c. 77. -	An Act to make further regulations respecting the tickets of work to be delivered to persons employed in the manufacture of hosiery in certain cases.	Section five. Section six. Section seven to "over to the person convicted" and Section eight from "and that when any distress" to the end of the section.
8 & 9 Vict. c. 100. -	An Act for the regulation of the care and treatment of lunatics.	Section one hundred and two from "and shall and may issue" to "sooner paid", and from "and the overplus" to the end of the section. Section one hundred and three, and Section one hundred and four from "the person appealing" to end of section.
8 & 9 Vict. c. 109. -	An Act to amend the law concerning games and wagers.	Section eleven from "and on non-payment" to "convicting justices", and Section twenty from "to be holden" to "by the last-mentioned court awarded".
9 & 10 Vict. c. 95. -	An Act for the more easy recovery of small debts and demands in England.	Section one hundred and thirty-one. Section one hundred and thirty-two. Section one hundred and thirty-four. Section one hundred and thirty-five, and Section one hundred and thirty-six, so far as it relates to any order, judgment, or proceeding before a court of summary jurisdiction.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
10 & 11 Vict. c. 16.	The Commissioners Clauses Act, 1847.	Section seventy-one from "and if he fail" to end of section.
10 & 11 Vict. c. 38.	An Act to facilitate the drainage of land in England and Wales.	Section sixteen and Section seventeen.
10 & 11 Vict. c. 62.	An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's Navy.	Section thirteen from "for any term" to "costs". Section fourteen, except so far as it applies to a proceeding under section nine; and Section fifteen.
11 & 12 Vict. c. 43.	An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders.	Section nine from "provided always that in all cases" to the end of the section. Section twelve from "and if there be" to "shall have arisen", so far as the same relates to a case arising under the Summary Jurisdiction Acts or any future Act. Section thirteen from "and if "such defendant shall not after- "wards appear" down to "evidence of such non-appearance of the said defendant." Section sixteen from "provided always that in all cases" to the end of the section. So much of section seventeen as specifies any form of conviction or order for which another form is provided by a rule under the Summary Jurisdiction Acts. Section nineteen from "provided always" to the end of the section. Section twenty from "provided always that in all cases" to the end of the section. The references (S. 1.) and (S. 2.) in section twenty-seven and the forms (S. 1.) and (S. 2.) in the schedule.
12 & 13 Vict. c. 14.	An Act to enable overseers of the poor and surveyors of the highways to recover the costs of distraining for rates.	Section nine.
12 & 13 Vict. c. 45.	An Act to amend the procedure in courts of general and quarter sessions of the peace in England and Wales, and for the better advancement of justice in cases within the jurisdiction of those courts.	Section one so far as relates to any appeal against an order of a court of summary jurisdiction.
12 & 13 Vict. c. 92.	An Act for the more effectual prevention of cruelty to animals.	Section fourteen from "upon the complaint of any person" to end of section. Section fifteen. Section sixteen.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
		Section seventeen. Section twenty-three. Section twenty-four. Section twenty-five from "which shall be holden" to end of section, and Section twenty-six from "and no warrant" to end of section.
15 & 16 Vict. c. 81.	An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales.	Section forty-six.
16 & 17 Vict. c. 33.	An Act for the better regulation of metropolitan stage and hackney carriages, and for prohibiting the use of advertising vehicles.	In section three the words "for "any time not exceeding one "month". In section seventeen the words "for any time not exceeding one calendar month", and In section nineteen from "for any time" to end of section.
16 & 17 Vict. c. 73.	An Act for the establishment of a body of Naval Coast Volunteers, and for the temporary transfer to the Navy in case of need of seafaring men employed in other public services.	In section twenty-three the words "for any time not exceeding six months."
16 & 17 Vict. c. 97.	The Lunatic Asylums Act, 1853	In section one hundred and twenty-eight the words "within "four calendar months after "such order or determination "made or given", and from "the person appealing" to "thereupon", from "upon proof" to "quarter sessions, and", and from "and may order" to end of section.
16 & 17 Vict. c. 119	An Act for the suppression of betting houses.	So much of sections three and four as prescribes the term of imprisonment for nonpayment of penalty and costs. Section thirteen from "to be holden" to "by the last-mentioned court awarded". Section fourteen down to "merits of the case, and", and Section fifteen.
16 & 17 Vict. c. 128.	An Act to abate the nuisance arising from the smoke of furnaces in the metropolis, and from steam vessels above London Bridge.	Section one, the words "nor less than forty shillings". Section two, the words "nor less than forty shillings".
17 & 18 Vict. c. 38.	An Act for the suppression of gaming houses.	So much of sections one, three, and four as prescribes the term of imprisonment for nonpayment of penalty and costs.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
		Section ten from "to be holden" to "by the last-mentioned court awarded." Section eleven down to "merits of the case and", and Section twelve.
17 & 18 Vict. c. 104. -	The Merchant Shipping Act, 1854.	Section five hundred and eighteen, sub-section (4), from "which is holden" to end of such sub-section.
18 & 19 Vict. c. 119. -	The Passengers Act, 1855 -	Section eighty-five, the words "according to the form in the "Schedule (N.) hereto an-"nexed", from "or the justice before whom" to "costs of the proceedings", and from "for any "term not exceeding three calen-"dar months" to "satisfied". Section eighty-seven, and Schedules (N.) and (O.)
18 & 19 Vict. c. 120. -	The Metropolis Management Act, 1855.	Section two hundred and thirty-one from "but no such appeal" to the end of the section, and Section two hundred and thirty-two, from "or they may confirm" to end of section.
22 & 23 Vict. c. 40. -	An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same.	In section twenty-four the words "for any time not exceeding six months".
22 & 23 Vict. c. 66. -	An Act for regulating measures used in sales of gas.	Section twenty-two from "to be held" to "such city, borough, or county", and from "and may order" to the end of the section, so far as relates to any order, judgment, or determination of a justice of the peace, mayor, or chief magistrate.
23 & 24 Vict. c. 32. -	An Act to abolish the jurisdiction of the ecclesiastical courts in Ireland in cases of defamation, and in England and Ireland in certain cases of brawling.	Section four from "which shall be holden" to end of section.
24 & 25 Vict. c. 96. -	The Larceny Act, 1861 - -	Section one hundred and five. Section one hundred and seven from "for any term not exceeding two months" to end of section. Section one hundred and ten from "which shall be holden" to the first "and the costs of the appeal;" and from "and the court at such sessions" to end of section. Section one hundred and eleven from "and no warrant" to end of section, and Section one hundred and twelve.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
24 & 25 Vict. c. 97. -	An Act to consolidate and amend the Statute Law of England and Ireland relating to malicious injuries to property.	Section sixty-two. Section sixty-five from "for any "term not exceeding two "months" to end of section. Section sixty-eight from "which shall be holden" to the first "and the costs of the appeal;" and from "and the court at such sessions" to end of section. Section sixty-nine from "and no warrant" to end of section, and Section seventy.
24 & 25 Vict. c. 99. -	An Act to consolidate and amend the Statute Law of the United Kingdom against offences relating to the coin.	Section thirty-two from "and no warrant" to end of section.
24 & 25 Vict. c. 110. -	The Old Metal Dealers Act, 1861	Section eleven from "which is holden" to "seem meet".
25 & 26 Vict. c. 61. -	An Act for the better management of highways in England.	Section forty-seven from "in manner provided" to end of section.
25 & 26 Vict. c. 114. -	An Act for the prevention of poaching.	Section five from "and no warrant" to end of section, and Section six from "which shall be holden" to end of section.
26 & 27 Vict. c. 65. -	The Volunteer Act, 1863 -	Section forty-eight from "held not less" in sub-section (1) to "and of the appeal" at end of sub-section (3); and from "the court" at beginning of sub-section (5) to "Metropolitan Police District"; and from "and a warrant of commitment" to "sustain the same".
26 & 27 Vict. c. 103. -	An Act to amend the law in certain cases of misappropriation by servants of the property of their masters.	In section one the words "for "any term not exceeding three "months, unless such penalty "be sooner paid". Section two from "which shall be holden" to "and the costs of the appeal"; and from "and the court at such sessions" to "evidence of such conviction", and Section three from "and no warrant" to end of section.
28 & 29 Vict. c. 121. -	The Salmon Fishery Act, 1865 -	Section sixty-six from "for the county" to end of section.
31 & 32 Vict. c. 45. -	The Sea Fisheries Act, 1868 -	Section fifty-eight from "in manner directed" to "be made", and from "for the county" to "either party".
32 & 33 Vict. c. 112. -	The Adulteration of Seeds Act, 1869.	Section six from "held not less" to "the said Act", and from "and a warrant of commitment" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
34 & 35 Vict. c. 31.	The Trade Union Act, 1871	Section twenty from "for the county" to end of section.
34 & 35 Vict. c. 105.	The Petroleum Act, 1871	Section fifteen from "the description of any offence" to "informant or prosecutor" (being sub-sections 4 and 5), and from "moreover" in sub-section (6) to "direct" in sub-section (7).
34 & 35 Vict. c. 112.	The Prevention of Crime Act, 1871.	Section seventeen from "the description of any offence" to "prosecutor or complainant" (being sub-sections 2 and 3).
35 & 36 Vict. c. 38.	The Infant Life Protection Act, 1872.	Section eleven from "the description" to "prosecutor."
35 & 36 Vict. c. 50.	The Railway Rolling Stock Protection Act, 1872.	Section six from "for the county" to end of section.
35 & 36 Vict. c. 76.	The Coal Mines Regulation Act, 1872.	Section sixty-one from "for the county" to "party as the court thinks just", and Section sixty-three from "the description of any offence" to "of the informant" (being sub-sections 2 and 3).
35 & 36 Vict. c. 77.	The Metalliferous Mines Regulation Act, 1872.	Section thirty-two from "for the county" to "party as the court thinks just", and Section thirty-four from "the description of any offence" to "part of the informant" (being sub-sections 2 and 3).
35 & 36 Vict. c. 93.	The Pawnbrokers Act, 1872	Section fifty-two from "for the county" to end of section, except so far as relates to an appeal against the refusal of a certificate for a licence, and Section fifty-four.
35 & 36 Vict. c. 94.	The Licensing Act, 1872	Section fifty-one from "where the court" to "complainant; and", (being sub-sections (2) and (3) and part of sub-section (4),) and Section fifty-two from "for the county" to end of section, and Section fifty-four from "moreover" to end of section.
36 & 37 Vict. c. 77.	The Naval Artillery Volunteer Act, 1873.	Section thirty-six from "the description of any offence" to "informant or complainant" (being sub-sections 1 and 2). Section thirty-eight from "the conditions" to "this Act", and from "for the county" to end of section, and Section forty from "moreover" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
36 & 37 Vict. c. 86. -	The Elementary Education Act, 1873.	Section twenty-four from "the description of the offence" to "part of the informant" (being sub-sections 1 and 2).
37 & 38 Vict. c. 67. -	The Slaughter-houses, &c. (Metropolis) Act, 1874.	Section six from "subject to" to "be made", and from "for the county" to end of section.
38 & 39 Vict. c. 17. -	The Explosives Act, 1875 -	Section ninety-three from "in manner provided" to end of section.
38 & 39 Vict. c. 55. -	The Public Health Act, 1875 -	Section two hundred and fifty-two, and Section two hundred and sixty-nine from "for the county" in sub-section one to "release him from custody" at the end of sub-section four, and from "In the case" in sub-section six to the end of the section, so far as relates to an appeal against an order or conviction of a court of summary jurisdiction.
38 & 39 Vict. c. 60. -	The Friendly Societies Act, 1875	Section thirty-three from "In any information" to "negatived" (being sub-section 5), and from "for the county" in sub-section (6) to end of such sub-section.
38 & 39 Vict. c. 63. -	The Sale of Food and Drugs Act, 1875.	Section twenty-three from "which shall be held" to "think proper."
38 & 39 Vict. c. 86. -	The Conspiracy and Protection of Property Act, 1875.	Section twelve from "for the county" to end of section.
39 & 40 Vict. c. 45. -	The Industrial and Provident Societies Act, 1876.	Section nineteen from "in any information" to "negatived", being sub-section (5), and from "for the county" in sub-section (6) to end of such sub section.
39 & 40 Vict. c. 77. -	The Cruelty to Animals Act, 1876.	Section sixteen from "subject to the conditions" to "shall be made", and from "for the county" to end of section.
41 & 42 Vict. c. 16. -	The Factory and Workshop Act, 1878.	Section ninety from "having jurisdiction" to end of section, and Section ninety-one from "the description of an offence" to "part of the informant", (being sub-sections 2 and 3); and from "a conviction" at the beginning of sub-section (6) to "form and".
41 & 42 Vict. c. 49. -	The Weights and Measures Act, 1878.	Section fifty-seven from "the description of an offence" to "sustain the same" (being sub-sections 1, 2, and 3), and Section sixty from "having jurisdiction" to end of section.

Year and Chapter.	Title or Short Title.	Extent of Repeal.
41 & 42 Vict. c. 74. -	The Contagious Diseases (Animals) Act, 1878.	Section sixty-four from "for the county" to end of section, and Section sixty-six from "a warrant of commitment" to "convicted" (being sub-section 3).
41 & 42 Vict. c. 77. -	The Highways and Locomotives (Amendment) Act, 1878.	Section thirty-seven from "subject to the conditions" to "shall be made", and from "for the county" to end of section.
42 & 43 Vict. c. 49. -	The Summary Jurisdiction Act, 1879.	In section thirty-one, the words "by this Act or by any future Act". Section thirty-two, down to "in "accordance with the condi- "tions and regulations con- "tained in this Act".
45 & 46 Vict. c. 50. -	The Municipal Corporations Act, 1882.	Sub-sections five and six of section two hundred and twenty-seven.

CHAP. 44.

Naval Pensions Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application to Greenwich Hospital pensions of* 28 *&* 29 *Vict. cc.* 73, 111, 124.
3. *Amendment of* 28 *&* 29 *Vict. cc.* 73 *and* 89, *as to restoration of forfeited pensions.*
4. *Repeal of* 19 *&* 20 *Vict. c.* 15. *and s.* 10 *of* 28 *&* 29 *Vict. c.* 73.
5. *Commencement of Act.*

SCHEDULE.

An Act to amend the Law respecting the Payment of Naval and Greenwich Hospital Pensions.

(7th August 1884.)

WHEREAS in pursuance of the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter fifteen, intituled "An Act for further regu- "lating the Payment of the Out-Pensioners of "Greenwich and Chelsea Hospitals," one of Her Majesty's Principal Secretaries of State makes regulations for the management and payment of the Greenwich out-pensioners and pays the pensions of those pensioners, but in other respects those pensioners are subject to the Lords Commissioners of the Admiralty (in this Act referred to as the Admiralty):

And whereas the Greenwich Hospital Act, 1865, provided that the said pensions should be called naval pensions:

And whereas the Naval and Marine Pay and Pensions Act, 1865, made provisions with respect to the pensions of seamen and marines subject to the enactment in section ten thereof that nothing in that Act should take away or abridge any power vested in one of Her Majesty's Principal Secretaries of State relative to naval pensions:

And whereas the Navy and Marines (Property of Deceased) Act, 1865, made provisions with respect to the payment of money which on the death of a person being or having been an officer, seaman, or marine, is due to him from the Admiralty:

And whereas by the Admiralty (Powers, &c.) Act, 1865, provision is made for punishing

persons who obtain pensions or money from the Admiralty by personation or other fraudulent means:

And whereas it is expedient that the payment of the said naval pensions should be wholly under the control of the Admiralty:

And whereas by the Greenwich Hospital Acts, 1865 to 1883, provision was made respecting pensions and gratuities to persons entitled to the benefits of Greenwich Hospital and to their widows, and for distinguishing the same as Greenwich Hospital pensions, gratuities, and allowances:

And whereas doubts may arise as to the application of the Naval and Marine Pay and Pensions Act, 1865, and the Navy and Marines (Property of Deceased) Act, 1865, and the Admiralty (Powers, &c.) Act, 1865, to such pensions, gratuities, and allowances, and doubts may also arise as to the effect of any Order in Council made in pursuance of the above-mentioned Acts so far as regards the restoration of a pension forfeited by conviction for crime, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Naval Pensions Act, 1884.

2. Any reference in the Naval and Marine Pay and Pensions Act, 1865, the Navy and Marines (Property of Deceased) Act, 1865, or the Admiralty (Powers, &c.) Act, 1865, to a pension or a naval pension, or to money payable by the Admiralty, shall be construed to include a naval pension and a Greenwich Hospital pension, gratuity, and allowance, within the meaning of the Greenwich Hospital Acts, 1865 to 1883, and any sum due on account of such a pension, gratuity, or allowance.

3. A provision of any Order in Council made in pursuance of the Naval and Marine Pay and Pensions Act, 1865, or of the Greenwich Hospital Acts, 1865 to 1883, respecting the restoration in whole or in part of any forfeited pension shall have effect notwithstanding any Act or law relating to the forfeiture of a pension on conviction for crime.

4. The Acts mentioned in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, without prejudice to anything previously done or suffered in pursuance thereof.

5. (1.) This Act shall come into operation on the first day of April one thousand eight hundred and eighty-five.

(2.) Any Order in Council, regulation, or appointment, for the purposes of this Act may be made before the commencement of this Act to take effect upon such commencement.

SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
19 & 20 Vict. c. 15 -	An Act for further regulating the payment of the out-pensioners of Greenwich and Chelsea Hospitals.	The whole Act so far as it relates to Greenwich out-pensioners.
28 & 29 Vict. c. 73 -	The Naval and Marine Pay and Pensions Act, 1865.	Section ten.

CHAP. 45.

National School Teachers Amendment (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extension of power to make loans for residences.*

An Act to amend the National School Teachers (Ireland) Act, 1879, in so far as it relates to the Loans for Teachers' Residences. (7th August 1884.)

WHEREAS it is expedient to afford greater facilities for providing residences for the teachers of National Schools in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the National School Teachers Amendment (Ireland) Act, 1884, and shall commence and come into operation on the day of the passing of the Act.

2. So much of the National School Teachers (Ireland) Act, 1879, as limits in respect to vested schools the operation of the said Act to National Schools vested in the Commissioners of National Education, or in trustees for National School purposes, which were so vested and in operation as National Schools on the first day of May one thousand eight hundred and seventy-nine, shall be repealed, and henceforth, i.e., from the passing of this Act, all schools, whether non-vested or vested, and if vested irrespectively of the date of vesting, shall be entitled to the benefit of loans for teachers residences.

CHAP. 46.

Naval Enlistment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Amendment of* 16 *&* 17 *Vict. c.* 69. *as to period of service of boys and evidence.*
3. *Application of s.* 91 *of* 44 *&* 45 *Vict. c.* 58. *to lunatic seamen.*
4. *Extension to marines of* 16 *&* 17 *Vict. c.* 73.
5. *Repeal of Acts, and savings.*
SCHEDULE.

An Act to amend the Naval Enlistment Act, 1853, and for other purposes connected therewith. (7th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter twenty-four, intituled "An "Act for the encouragement of the voluntary "enlistment of Seamen, and to make regulations for more effectually manning His "Majesty's Navy," is in this Act referred to and may be cited as the Naval Enlistment Act, 1835.

The Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter sixty-nine, intituled "An "Act to make better provision concerning the "entry and service of Seamen, and otherwise "to amend the laws concerning Her Majesty's "Navy," is in this Act referred to and may be cited as the Naval Enlistment Act, 1853.

This Act and the Naval Enlistment Act, 1835, and the Naval Enlistment Act, 1853, shall be construed together as one Act, and may be cited together as the Naval Enlistment

Acts, 1835 to 1884, and this Act may be cited separately as the Naval Enlistment Act, 1884.

2. Whereas by the Naval Enlistment Act, 1835, it is provided that a person shall not be detained in the naval service of His Majesty for more than five years unless he voluntarily entered the same for a longer term, and that, at the expiration of such term, he shall be discharged as therein provided:

And whereas by the Naval Enlistment Act, 1853, it was enacted (by section one) that where, under the regulations or directions of the Admiralty, men were willing to enter or re-enter into the naval service of Her Majesty for ten years continuous and general service or for such other term of continuous and general service as under the said regulations or directions may be authorised, such men should be liable to serve accordingly, and (by section two) that every boy under the age of eighteen years entering the naval service of Her Majesty should be entered and liable to serve until he attains the age of twenty-eight years, and that a person who, when of the age of eighteen or upwards, entered into such naval service as a boy, should be entered for ten years continuous and general service from the time of his entering, and should be liable to serve accordingly:

And whereas it is expedient to provide for the addition of two years to the service of boys hereafter entered into the naval service of Her Majesty, and otherwise to amend the said enactments: Be it therefore enacted as follows:

(1.) If the regulations which the Admiralty may from time to time make so direct—

(*a.*) men willing to enter or re-enter into the naval service of Her Majesty may be entered or re-entered for continuous and general service for such period as may for the time being be fixed by the said regulations; and

(*b.*) every person entering into the naval service of Her Majesty as a boy may be entered for continuous and general service for such period not exceeding twelve years, or, if he enters when below the age of eighteen, not exceeding the time required for him to attain the age of thirty years, as may for the time being be fixed by the said regulations.

(2.) Men and boys entering in pursuance of this section shall be liable to serve in accordance with the terms of their entry; and the enactments of the Naval Enlistment Act, 1835, and the enactments amending the same shall be applicable to every man and boy as if the term for which he is entered and liable to serve were throughout substituted for the term in the said enactments mentioned.

(3.) Any certificate which is by law evidence of the birth of a person, and any declaration under the Statutory Declarations Act, 1835, by the parent or guardian of a person entering into the naval service of Her Majesty as a boy respecting the place of birth of such boy, and a declaration made by a man on entering into the naval service of Her Majesty, respecting his place of birth, shall, for the purposes of this Act and of the said enactments, be evidence until the contrary is proved of the place of birth of the person, boy, or man referred to in the certificate or declaration.

3. Section ninety-one of the Army Act, 1881 (which section relates to the sending of lunatic soldiers by a Secretary of State to workhouses and lunatic asylums and other places in which lunatics can legally be confined), shall apply in like manner as if it were herein re-enacted, with the substitution of "a person in the naval service of Her Majesty" for "soldier" and "soldier of the regular forces" respectively, and of "the Admiralty" for "a Secretary of State," and as if any declaration made on a person entering into the naval service of Her Majesty as a boy by his parent or guardian, or made by a man on entering into such service, were respectively substituted for the attestation paper.

4. Whereas under sections sixteen and twenty-one of the Act of the session of the sixteenth and seventeenth years of the reign of Her present Majesty, chapter seventy-three, intituled "An Act for the establishment of a body of naval coast volunteers, and for the temporary transfer to the navy in case of need of seafaring men employed in other public services," the Admiralty have power, whenever an emergency arises, to require the service in Her Majesty's navy of persons who may have served as petty officers or seamen in Her Majesty's navy, and may be in receipt of pensions in respect of such service, and pensioners failing so to join are liable to be punished as therein mentioned; and whereas it is expedient to extend the said enactments to persons enlisted or re-engaged after the passing of this Act who have served in the royal marine forces, and who are not members of the army reserve force: Be it therefore enacted as follows:

Sections sixteen and twenty-one of the above-recited Act shall apply to persons enlisted or re-engaged after the passing of this Act, who have served as non-commissioned officers and men of the royal marine forces, and are in receipt of pensions in respect of such

service, in like manner as if those sections were herein re-enacted, with the substitution of such non-commissioned officers and men for petty officers or seamen of Her Majesty's navy, subject to the following qualifications: that men enlisted in the army reserve force shall not be subject to be required to serve in pursuance of the said sections, and the non-commissioned officers and men who are required to serve shall be subject to serve and be entitled to pay as other non-commissioned officers and men in the royal marine forces, and not as petty officers and seamen.

5.—(1.) The Act mentioned in the schedule to this Act is hereby repealed to the extent in the third column of that schedule mentioned.

(3.) Men and boys who entered or re-entered into the naval service of Her Majesty in pursuance of any enactment repealed by this Act shall continue liable to serve in like manner as if the said enactment had not been repealed, and until regulations are made by the Admiralty in pursuance of this Act the regulations in force at the commencement of this Act with respect to enlistment shall continue in force, and the enactments repealed by this Act shall, for the purposes of this Act, have effect as if they were regulations of the Admiralty.

SCHEDULE.

ACT REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
16 & 17 Vict. c. 69. -	An Act to make better provision concerning the entry and service of seamen, and otherwise to amend the laws concerning Her Majesty's navy.	Sections one and two.

CHAP. 47.

Contagious Diseases (Animals) Transfer of Parts of Districts Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Transfer of powers from one local authority to another.*
3. *Formation of united district.*
4. *Execution of agreement.*
5. *Definition of "jurisdiction."*
6. *Application of Act to Scotland.*
7. *Application of Act to Ireland.*

An Act to enable Local Authorities to transfer the whole or certain parts of their Districts for the purposes of the Contagious Diseases (Animals) Act, 1878, to the Districts of neighbouring Local Authorities.

(7th August 1884.)

WHEREAS it is expedient for the more effectual and convenient administration of the provisions of the Contagious Diseases (Animals) Act, 1878, to enable local authorities to transfer the whole or certain parts of their districts for the purposes of that Act to the districts of neighbouring local authorities:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Contagious

Diseases (Animals) Transfer of Parts of Districts Act, 1884, and shall be construed as one with the Contagious Diseases (Animals) Act, 1878.

2. Wherever the whole or any part of the district within which any local authority exercises jurisdiction under the provisions of the Contagious Diseases (Animals) Act, 1878, or any Order of Council from time to time in force by virtue thereof, is wholly surrounded by or has a common boundary with the district within which any other local authority exercises the like jurisdiction, those two local authorities may by agreement in writing between themselves make and from time to time vary and rescind provisions for the exercise by one of them (in this Act referred to as the administering authority) of jurisdiction under the said Act or any such Order within the whole or any part or parts of the district of the other (in this Act referred to as the surrendering authority) and for ascertaining the proportion of the expenses of the administering authority to be paid by the surrendering authority, such proportion to be fixed with reference to the rateable value of the part of the district of the surrendering authority surrendered to the administering authority as compared with the rateable value of the original area of the district of the administering authority.

The district or part of a district subjected, in pursuance of an agreement under this section, to the jurisdiction of the administering authority, shall, for the purpose of the exercise of such jurisdiction, be deemed to be part of the district of the administering authority, and be dealt with accordingly.

Any expenses payable by a surrendering authority to an administering authority under this section shall be paid out of the rate or fund out of which such expenses would have been paid had they been incurred by the surrendering authority itself.

Provided that where the surrendering authority is a borough and the administering authority is a county to the rate of which such borough is assessed, the first provision of section forty-seven of the Contagious Diseases (Animals) Act, 1878, requiring repayment by the local authority of the county to the local authority of the borough therein mentioned shall not apply.

3. A local authority may from time to time by agreement concur with any other local authority or authorities in appointing out of their respective bodies a joint committee consisting of such number of members with such tenure of office as they may determine, and in assigning to such joint committee a district consisting of the whole or such parts of the districts of the constituent authorities as such authorities may determine, and in delegating to such joint committee within their district the whole or any part of the jurisdiction of a local authority under the Contagious Diseases (Animals) Act, 1878, or any Order of Council from time to time enforced by virtue thereof, and any such committee shall, in respect of any jurisdiction so assigned to them, exercise the same powers and be subject to the same obligations, and the said Act and any Order made in pursuance thereof shall, in respect of the district so assigned, take effect as if such district were the district of a local authority and the joint committee were a local authority within the meaning of the said Act.

All expenses incurred by such joint committee shall be apportioned among the component areas belonging to the different constituent authorities in proportion to the rateable values of such areas, as compared with each other, and shall be paid out of the rates or funds out of which such expenses would have been paid had they been incurred by the constituent authorities themselves.

4. Any agreement made by a local authority under this Act shall be binding so far as respects such authority if executed by the chairman for the time being of the local authority and two other members of such authority, or, where such authority is a corporation, if executed under the corporate seal.

No such agreement shall be valid unless it has been approved by the Privy Council.

5. The expression "jurisdiction" shall not include the power of making or levying a rate, but shall include all other powers, duties, and obligations exerciseable by or imposed on a local authority or its officers under the Contagious Diseases (Animals) Act, 1878, or any Order of Council from time to time enforced by virtue of such Act.

6. In the application of this Act to Scotland, "rateable value" means value according to the valuation roll.

7. In the application of this Act to Ireland, the expression "Privy Council" means the Lord Lieutenant and Privy Council.

CHAP. 48.

Oyster Cultivation (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to Inspectors of Irish Fisheries to make order for oyster fishery.*
3. *Publication of notices.*
4. *Objections and representations respecting order.*
5. *Inquiry into proposed order by public sittings.*
6. *Settlement and making of order.*
7. *Publication of order.*
8. *Order to be approved by Lord Lieutenant.*
9. *Appeal against order.*
10. *Amendment of order.*
11. *Effect of order.*
12. *Grantees may appoint bailiffs, and make regulations.*
13. *Penalty for trespass or breach of regulations.*
14. *Inspectors of Irish Fisheries may make order as to dredging, &c. during part of close season.*
15. *Proof of order.*
16. *Orders determinable.*
17. *Order not to abridge right of several fishery, &c.*
18. *Copies of orders to be kept for sale.*
19. *Extension of Act to mussels.*
20. *Saving for rights of the Crown.*
21. *Extend to Ireland only.*

An Act to promote the Cultivation of Oysters in Ireland. (7th August 1884.)

WHEREAS under the provisions of the Act 32 & 33 Victoria, chapter ninety-two, and the Acts incorporated therewith, the Inspectors of Irish Fisheries are empowered to grant licenses to certain persons to form or plant oyster beds or layings, whether above or below low-water mark, and it is expedient, with the view of further promoting the cultivation of oysters in certain places, to extend these powers: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be quoted as the Oyster Cultivation (Ireland) Act, 1884.

2. The inspectors of Irish Fisheries may make orders for the establishment or improvement, and for the maintenance and regulation, of an oyster fishery on the shore and bed of the sea, or of an estuary or tidal river above or below or partly above and partly below low-water mark (which shore and bed are in this Act referred to as the seashore), and including, if desirable, provisions for the constitution of a board or body corporate for the purpose of such order, on an application by memorial presented to the said Inspectors by any person or persons desirous of obtaining such an order.

3. If on consideration of the memorial the Inspectors of Irish Fisheries think fit to proceed with the case they shall cause notices to that effect to be published and circulated in the district to be affected by said order, and shall give notice of the application in such manner as they shall think sufficient and proper for giving information to all parties interested, and to the owners or reputed owners, lessees or reputed lessees, and occupiers or reputed occupiers, so far as they may be known or ascertained, of the portion of the seashore to which the proposed order relates, or of the lands adjoining thereto.

4. During one month after the publication of said notices the Inspectors of Irish Fisheries shall receive any objections or representations made to them in writing respecting the proposed order.

5. After the expiration of one month the Inspectors of Irish Fisheries, or any one of them, shall proceed to make an inquiry concerning the subject matter of the proposed order, and for that purpose to hold a sitting or sittings in some convenient place in the neighbourhood of the portion of the seashore

to which the proposed order relates, and thereat to take and receive any evidence and information offered, and hear and inquire into any objections or representations made respecting the proposed order, with power from time to time to adjourn any sitting; and the Inspectors may, for the purpose of such inquiry, take evidence, and by summons require the attendance of any person, and examine him and any person who attends before him, on oath or otherwise, as they think expedient, and may administer an oath or take any affidavit or declaration for the purpose of the inquiry; and any person so summoned who, after tender to him of his reasonable expenses, refuses or neglects to obey such summons, and any person who refuses or neglects to answer any question which the Inspectors are authorised to ask, shall be liable, on summary conviction, to a penalty not exceeding ten pounds for each offence; and any person who wilfully gives false evidence in any examination on oath in any such inquiry, or in an affidavit or declaration to be used in any such inquiry, shall be deemed guilty of perjury.

Notice shall be published in such manner as the Inspectors of Irish Fisheries direct of every such sitting (except an adjourned sitting) fourteen days at least before the holding thereof.

6. As soon as conveniently may be after such inquiry, they shall proceed to consider the objections or representations that have been made respecting the proposed order, and thereupon they shall either refuse the application or settle and make an order in such form, and containing such provisions as they think expedient.

7. Where the Inspectors of Irish Fisheries make an order, they shall cause it to be published and circulated in such manner as they shall think sufficient for giving information to all parties interested, and shall give notice of it in such manner as they approve to the owners or reputed owners, lessees or reputed lessees, and occupiers or reputed occupiers (if any), so far as they may be known or ascertained of the portion of the seashore to which the order relates or of the lands adjoining thereto.

8. An order of the Inspectors of Irish Fisheries shall not of itself have any operation until confirmed by the Lord Lieutenant in Council.

9. Any person feeling aggrieved with an order of the Inspectors of Irish Fisheries may, within one month after the making of same, appeal to the Lord Lieutenant in Council against same.

10. The Inspectors of Irish Fisheries may from time to time make an order for amending an order that has been confirmed by the Lord Lieutenant, and all the provisions relative to an original order shall apply also to an amending order mutatis mutandis.

11. When an order of the Inspectors of Irish Fisheries has been confirmed by the Lord Lieutenant, the grantee or grantees shall by virtue of such order have within the limits of the oyster fishery named therein the exclusive right of depositing, propagating, dredging, and fishing for and taking oysters, and in the exercise of that right may, within the limits of the fishery, make and maintain oyster beds, and at any season collect oysters and remove the same from place to place, and deposit the same as and where they think fit, and do all other things which they think proper for obtaining, storing, and disposing of the produce of their fishery, or for the regulation of such fishery.

12. For the purpose of protecting an oyster fishery granted under such order, the grantee or grantees, under the hands of any two of them, where more than two, and subject to the approval of the Inspectors of Irish Fisheries, may appoint, at the cost and expense of the grantees, any bailiffs they may consider necessary for the protection of such fishery, and may make such regulations for the management of such fishery, subject to said approval, as they may consider necessary, and any bailiff so appointed may enforce such regulations, and shall have all the powers conferred on water bailiffs by any Act or Acts of Parliament in force relating to Irish Fisheries.

13. Any person who wilfully trespasses on such fishery, or on any oyster bed or oyster layings for which a license has been heretofore granted under the provisions of any Act of Parliament in force in Ireland, or who, not being a grantee named in such order, or not having the written permission of the grantee or grantees, or, where more than two, of at least two thirds of the grantees, shall dredge, fish for, or take any oysters, or who, being a grantee or duly authorised as aforesaid, shall dredge, fish for, or take any oysters in contravention of any regulations made as aforesaid, shall be liable, on summary conviction, to pay a penalty not exceeding twenty pounds, and to forfeit all oysters taken, or a sum equal to the value thereof if they have been sold, or have not been delivered up to the bailiff so

appointed, which forfeiture may be enforced in the same manner as a penalty; and the court may direct such penalties and forfeitures to be paid or delivered to the grantees to be applied by them for the improvement and cultivation of the fishery.

14. The Inspectors of Irish Fisheries may, upon the application of any person possessed of or interested in any oyster fishery, make an order permitting the dredging for, taking, or having in possession any American, Portuguese, or other foreign oysters during such part only of the close season for oysters in Ireland, as now fixed or may hereafter be fixed, as the said inspectors shall, upon inquiry, think fit to appoint and determine for such purpose for or in any district or place: Provided always, that before making any such order the inspectors shall take the same steps as are provided by the Act of Parliament of the seventh and eighth Victoria, chapter one hundred and eight, in case of altering the close season in any district or locality, and of publishing any such order, as are directed by such Act or any other Act of Parliament in force in Ireland.

15. Whenever it is necessary in any legal proceeding to prove the existence of an order under this Act, a certificate, endorsed on a copy purporting to be a copy of said order, purporting to be under the hand of one of the Inspectors of Irish Fisheries, that same is a true copy of said order, and that same has been confirmed by the Lord Lieutenant, shall be taken and received as evidence in all courts of the existence of such order.

16. Whenever it shall appear to the Inspectors of Irish Fisheries that the grantee or grantees in any order made under this Act are not maintaining the oyster fishery granted thereunder, it shall be lawful for the Inspectors of Irish Fisheries, if they shall so think fit, to determine by a certificate under their hands such order, and thereupon all rights and privileges thereunder shall be absolutely determined, and shall be null and void; and for the purpose of this provision the Inspectors of Irish Fisheries may from time to time make such inquiries and examination, and require from the grantees such information as they think necessary or proper, and the grantees shall afford all facilities for such inquiries and examination, and give such information accordingly.

17. No order made under this Act shall take away or abridge any right of several fishery, or any right on, to, or over any portion of the seashore, which right is enjoyed by any person under any local or special Act of Parliament, or any royal charter, letters patent, prescription, or immemorial usage, without the consent of such person.

18. The person or persons obtaining an order under this Act shall at all times keep at some convenient place in the neighbourhood of the portion of the seashore to which the order relates, copies of the order, and shall sell such copies to all persons desiring to buy them at a price not exceeding one shilling for each copy.

19. This Act shall apply to mussels, and to mussel beds and mussel fisheries, in the same way as it applies to oysters, and to oyster beds and oyster fisheries.

20. Where any portion of the seashore proposed to be comprised in an order of the Inspectors of Irish Fisheries under this Act belongs to Her Majesty, her heirs or successors, in right of the Crown, the Inspectors shall not make the order without the consent of the Board of Trade, or, if such portion of the seashore is not under the management of the Board of Trade, then without the consent of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them.

21. This Act shall extend only to Ireland.

CHAP. 49.

Public Works Loans Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

Granty of Money for Public Works Loan Commissioners.

2. *Grant of* 3,000,000*l. for Public Works Loans.*

PART II.

Grant of Money for Public Works Commissioners, Ireland.

3. *Grant of* 1,200,000*l. for loans by Commissioners of Public Works in Ireland.*

PART III.

Grant of Money for Irish Land Commission.

4. *Grant of* 500,000*l. to Land Commission.*

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and of loans and purchases by the Irish Land Commission.

(7th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Works Loans Act, 1884.

PART I.

Grant of Money for Public Works Loan Commissioners.

2. (1.) For the purpose of loans by the Public Works Loan Commissioners,—

(*a.*) Any sum or sums, not exceeding in the whole the sum of three million pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans Act, 1875, as amended by the Public Works Loans Act, 1879; and

(*b.*) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the day on which a further Act granting money for the purpose of the said loans comes into operation.

(2.) The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART II.

Grant of Money for Public Works Commissioners, Ireland.

3. (1.) For the purpose of loans by the Commissioners of Public Works in Ireland,—

(*a.*) Any sum or sums, not exceeding in the whole one million two hundred thousand pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by Part Two of the Public Works Loans (Ireland) Act, 1877, as amended by the Public Works Loans Act, 1879; and

(*b.*) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the day on which a further Act authorising the issue of money for those loans comes into operation.

(2.) The Treasury may, in the manner and subject to the limitations provided by Part Two of the Public Works Loans (Ireland) Act, 1877, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART III.

Grant of Money for Irish Land Commission.

4. (1.) For the purpose of advances or of purchases of estates by the Irish Land Commission under the Land Law (Ireland) Act, 1881, and under the Tramways and Public Companies (Ireland) Act, 1883, any sum or sums, not exceeding in the whole the sum of five hundred thousand pounds, may be issued out of the Consolidated Fund of the United

Kingdom, or the growing produce thereof, in manner provided by the said Acts, and such sums may be issued during the period ending on the day on which a further Act providing money for the purpose of such advances or purchases comes into operation.

(2.) The Treasury may, in the manner and subject to the limitations provided by the said Acts, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

CHAP. 50.

Metropolitan Board of Works (Money) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction of Act.*
3. *Interpretation.*
4. *Amendment of* 46 *&* 47 *Vict. c.* 27. *s.* 11.
5. *Amendment of* 46 *&* 47 *Vict. c.* 27. *s.* 12.
6. *Power to expend moneys for purposes of Metropolitan Board of Works (Bridges) Act*, 1884, *the Metropolitan Board of Works (Various Powers) Act*, 1884, *the Metropolitan Commons Supplemental Act*, 1884, *and the Metropolitan Board of Works (District Railway Ventilators) Acts*, 1883 *and* 1884.
7. *Power to expend moneys for sundry purposes during year* 1885.
8. *Special power to expend money for purposes of main drainage and main sewers.*
9. *Power to lend to vestries, district boards, corporations, burial boards, &c.*
10. *Power to lend to boards of guardians.*
11. *Extension of amount of loans to the Managers of Metropolitan Asylum District.*
12. *Power to lend to School Board for London.*
13. *Power to raise consolidated stock.*
14. *Ratification of Board's expenditure for fire brigade purposes.*
15. *Board may raise money by bills.*
16. *Form and length of currency and interest on metropolitan bills.*
17. *Payment and applications of proceeds of metropolitan bills and charge of bills on consolidated rate.*
18. *Sections* 18 *and* 19 *and* 21 *and* 22 *of the Act of* 1883 *to apply to metropolitan bills under this Act.*
19. *Power to create consolidated stock partially suspended while metropolitan bills authorised to be raised.*
20. 32 *&* 33 *Vict. c.* 102. *s.* 38. *not to extend to money raised under this Act.*
21. *Repayments to be carried to consolidated loans fund.*
22. *Limit to exercise of borrowing powers.*
23. *As to sale of superfluous lands.*

SCHEDULES.

An Act further to amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes. (7th August 1884.)

WHEREAS by the Metropolitan Board of Works (Loans) Act, 1875, (in this Act referred to as "the Act of 1875,") the raising of money by the Metropolitan Board of Works (in this Act referred to as "the Board") for the purposes therein specified was regulated, and provision was made requiring that the borrowing powers granted to the Board by Parliament for the purposes therein named, should for the future be limited both in time and amount:

And whereas by the Metropolitan Board of Works (Money) Act, 1883, (in this Act referred to as "the Act of 1883,") the Board were empowered to raise certain sums of money for the purposes in the said Act mentioned, and limits of time and amount within which the powers by the said Act granted might be exercised were fixed:

And whereas the powers for the raising of money by the Act of 1883 conferred upon the Board have been partially exercised, but it is expedient that the Board should have power

to raise certain further sums of money specified in the First Schedule to this Act annexed for the purposes, upon the terms, and subject to the limitations herein-after mentioned, and that the Act of 1883 should be amended:

And whereas it is expedient that the Board should be empowered to apply for the purpose of certain Loans by the Board under this Act, any moneys for the time being forming part of the Consolidated Loans Fund, and not required for the payments of the dividends on Consolidated Stock:

And whereas it is expedient that the Board should be empowered to raise any of the moneys which they are by this Act authorised to raise, and which it may be convenient to raise for a temporary period by the issue of bills, with the consent of the Treasury, for not less than three and not more than twelve months to be repaid out of moneys raised by the creation of Consolidated Stock under this Act:

And whereas the payments by the Board, up to the 31st December 1883, for the purposes of the Fire Brigade Act, 1865, exceeded by the sum of seven thousand two hundred and twenty-two pounds nineteen shillings and eight pence, the amount of the moneys authorised to be raised by means of the Consolidated Rate, under the authority and subject to the limitations of the Metropolitan Board of Works (Loans) Act, 1869, and of the moneys received by the Board towards their expenses for the said purposes and the said sum was advanced by the Board out of other moneys in hand and it is expedient that such payments be sanctioned and confirmed and that the Board should be authorised to transfer to the Fire Brigade Account a sum of seven thousand two hundred and twenty-two pounds nineteen shillings and eight pence from the balance in their hands of rate raised for general purposes:

And whereas it is expedient to amend the Acts regulating the sale of superfluous lands by the Board, and to make such provisions with respect to the sale of such lands by the Board as are in this Act contained:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Metropolitan Board of Works (Money) Act, 1884, and the Metropolitan Board of Works (Money) Acts, 1875 to 1883, and this Act, may be cited together as the Metropolitan Board of Works (Money) Acts, 1875 to 1884.

2. This Act shall be read and have effect as one with the Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and the Metropolitan Board of Works (Money) Acts, 1875 to 1883.

3. The expression "Parks and Open Spaces Acts" in this Act shall mean the enactments specified in the Second Schedule to this Act annexed.

The expression "Main Drainage Acts" in this Act shall have the same meaning as is assigned to the same term in the Metropolitan Board of Works (Loans) Act, 1869.

4. Section eleven of the Act of 1883 shall be read and construed as if the sums which the Board was thereby authorised to lend to Boards of Guardians had been limited to a sum not exceeding three hundred thousand pounds instead of two hundred thousand pounds.

5. Section twelve of the Act of 1883 shall be read and construed as if the sums which the Board was thereby authorised to lend to the managers of the Metropolitan Asylum District had been thereby limited to sums not exceeding in the whole one hundred and fifty thousand pounds instead of fifty thousand pounds.

6. The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty-five, expend for the purposes herein-after mentioned, such moneys as they may think fit, not exceeding the amounts limited in relation to such purposes respectively.

For the purposes of the Metropolitan Board of Works (Bridges) Act, 1884, if it becomes law, thirty-one thousand pounds;

For the purposes of the Metropolitan Board of Works (Various Powers) Act, 1884, if it becomes law, sixty-five thousand pounds;

For the purposes of the Metropolitan Commons Supplemental Act, 1884, one thousand pounds; and

For the purposes of the Metropolitan Board of Works (District Railway Ventilators) Act, 1883, and the Metropolitan Board of Works (District Railway Ventilators) Act, 1884, if it becomes law, fifteen thousand pounds:

Provided always, that the money to be raised and the consolidated stock to be created by the Board for the purposes mentioned in this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury shall approve for the purpose of carrying out the provisions of the said Acts respectively in a proper and efficient manner.

7. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-five expend for the purposes herein-after mentioned, such moneys as they may think fit, not exceeding the amounts limited in relation to such purposes respectively:

(*a.*) For the purposes of providing station-houses, fire-engines, fire-escapes, and permanent plant for the purposes of the Fire Brigade Act, 1865, thirty-five thousand pounds;

(*b.*) For the purposes of the Parks and Open Spaces Acts, fifteen thousand pounds;

(*c.*) For the purposes of the Metropolis Toll Bridges Act, 1877, including the cost of certain special works for the maintenance and repair of certain of the bridges acquired by the Board under the said Act, and the commutation of pensions, twenty thousand pounds;

(*d.*) For the purposes of the Metropolitan Bridges Act, 1881, one hundred and seventy-two thousand pounds, provided that the moneys expended by the Board under the authority of this sub-section shall not, together with all moneys previously expended by the Board for the said purposes exceed seven hundred and sixty thousand pounds;

(*e*) For the purposes of the Metropolitan Board of Works (Bridges, &c.) Act, 1883, ninety thousand pounds, provided that the moneys expended by the Board under the authority of this sub-section shall not, together with all moneys previously expended by the Board for the said purposes, exceed one hundred and thirty-four thousand pounds;

(*f.*) For the purposes of the Thames River (Prevention of Floods) Act, 1879, five thousand pounds, or such further sum as the Treasury may approve;

(*g.*) For the purposes of schemes made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, or the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, and confirmed by Provisional Order and Act of Parliament, seventy thousand pounds, or such further sum as the Treasury may approve;

(*h.*) For the purposes of the Metropolitan Street Improvements Act, 1877, four hundred and ten thousand pounds, or such further sum as the Treasury may approve, provided that the moneys expended by the Board under the authority of this sub-section, together with all moneys previously expended by the Board for the said purposes, may exceed the amount of three millions seven hundred and twelve thousand five hundred and seven pounds, limited by the Act of 1883, but shall not exceed four million one hundred and ninety-three thousand five hundred and seven pounds;

(*i.*) For the purposes of the Metropolitan Street Improvements Act, 1883, two hundred thousand pounds provided that the moneys expended by the Board under the authority of this sub-section shall not together with all money previously expended by the Board for the said purposes exceed seven hundred and eighty-two thousand seven hundred pounds;

(*k.*) For the purposes mentioned in section one hundred and forty-four of the Metropolis Management Act, 1855, and section seventy-two of the Metropolis Management Amendment Act, 1862, and for the purposes of the Metropolitan Board of Works (Various Powers) Act, 1882, one hundred thousand pounds:

Provided always, that the moneys to be expended and the consolidated stock to be created by the Board for the purposes mentioned in this section respectively shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury shall approve for the said purposes respectively.

8. The Board may from time to time up to the thirty-first day of December one thousand eight hundred and eighty-five, expend, for the purpose of adding to, extending, enlarging, improving, and completing the works authorised by the Main Drainage Acts, and for rendering the same efficient in such manner as to them may seem proper, and for extending, enlarging, and improving the main sewers transferred to and vested in the Board under and by virtue of the Metropolis Management Act, 1855, and for making such other sewers and works, and such alterations and diversions of such existing main sewers, as may to them seem proper for the purpose of relieving, supplementing, and rendering such main sewers efficient, and for carrying into effect the several provisions in relation thereto mentioned in the said Acts, such moneys as they may think fit, not exceeding two hundred and ninety thousand pounds, in addition to any moneys which they are authorised to expend under any Acts passed previously to the passing of this Act; and all the provisions of the Main Drainage Acts and the Metropolis Management Act, 1855, and the Acts altering or amending the same, for the time being in force relating to the execution of works

authorised by the said Acts respectively shall continue in force, and shall extend and apply respectively to the works executed by means of money raised for the purposes of this section; and all stock created under the authority of this Act for such purposes shall be deemed to be created for the purposes of the above-mentioned Acts respectively.

9. Where a vestry or district board constituted under the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-five the Board may lend to the vestry or district board, and the vestry or district board may borrow from the Board, such money as the Board think fit, and as the vestry or district board are authorised and desire to borrow, not exceeding two hundred thousand pounds; and

Where any corporation, body of commissioners, burial board, or other public body (not being a vestry or district board constituted under the Metropolis Management Act, 1855, a board of guardians, the Managers of the Metropolitan Asylum District, or the School Board for London), having power to levy directly or indirectly rates in respect of lands in the metropolis, as defined in the Metropolis Management Act, 1855, or to make charges on rates leviable in the metropolis as so defined, or to take within the metropolis as so defined dues or impositions in the nature of rates, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-five the Board may lend to the corporation, commissioners, burial board, or other public body, and they may borrow from the Board, such money as the Board think fit, and as the corporation, commissioners, burial board, or other public body are authorised and desire to borrow, not exceeding one hundred thousand pounds.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree: Provided that the time after the borrowing within which such moneys shall be repaid to the Board shall not exceed in the case of a loan for purposes of improvements effected by the widening of streets or bridges, or for the purpose of purchase of land in fee simple, sixty years, and for any other purpose thirty years. Provided further that nothing in section twelve of the Metropolitan Board of Works (Money) Act, 1879; in section eleven of the Metropolitan Board of Works (Money) Act, 1880; in section fifteen of the Metropolitan Board of Works (Money) Act, 1881; in section thirteen of the Metropolitan Board of Works (Money) Act, 1882; in section ten of the Act of 1883, or in this section, shall be deemed to have prevented or to prevent the Board from agreeing that any such loan as is in the said sections respectively mentioned, and which has been or may be made by the Board to any vestry or district board, shall be repaid by such instalments or otherwise, and at such time or times (not exceeding the times by the said sections respectively prescribed) as the Board may think fit and the Treasury may approve.

10. Where a board of guardians of a union or parish wholly or for the greater part in the metropolis as defined in the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-five the Board may lend to the board of guardians, and the board of guardians may borrow from the Board, such money as the Board think fit, and as the board of guardians are authorised and desire to borrow, not exceeding two hundred thousand pounds.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree, not exceeding thirty years.

11. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-five lend to the Managers of the Metropolitan Asylum District, in addition to the

sums heretofore authorised to be lent by the Board to the said Managers, such sums as the said Managers are from time to time authorised by the Local Government Board to borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts altering or amending the same for the time being in force, not exceeding in the whole one hundred and fifty thousand pounds, as though the said sums were included in the amount authorised to be lent for such purposes by section thirty-seven of the Metropolitan Board of Works (Loans) Act, 1869, and the Acts amending the same.

12. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-five lend to the School Board for London, in accordance with the provisions of the Elementary Education Acts, 1870 and 1873, and any Act or Acts altering or amending the same for the time being in force, such sums as the said School Board are from time to time authorised to borrow by the Education Department in pursuance of the said Acts, not exceeding in the whole the sum of seven hundred thousand pounds.

The moneys so lent by the Board shall be repaid to them by the said School Board, with interest, within such period not exceeding fifty years as may be agreed upon between the Board and the said School Board with the sanction of the Education Department, subject to the approval of the Treasury.

13. In order to raise money for the several purposes for which the Board are by this Act authorised to expend or lend money, the Board may from time to time create consolidated stock. Provided always, that—

Where the Board under the authority of this Act create consolidated stock to raise money for the purpose of the Fire Brigade Act, 1865, or to enable them to make a loan repayable within thirty years from the date of such loan, the Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve as being in their opinion sufficient to redeem within the period of thirty years from the date of the creation of such stock, or in the case of any such loan within any lesser period for which the same may be made, an amount of consolidated stock equal to that so created; and

Where the Board are by this Act authorised to make a loan, the Board, instead of raising money for any such loan by the creation of consolidated stock, may use for any such loan any moneys for the time being forming part of the consolidated loans fund, and not required for the payments of the dividends on consolidated stock. Provided that no such moneys shall be used for any such loan which shall be repayable at any date later than the date at which such moneys will be required by the Board to pay off consolidated stock; and

Where the Board raise consolidated stock for the purpose of any scheme made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, or the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, and confirmed by Provisional Order and Act of Parliament, there shall be repaid (as provided by the Artizans and Labourers Dwellings Improvement Act, 1875,) to the consolidated rate out of the local rate as defined by the said last-mentioned Act, all moneys required for payment of dividends on and the redemption of all consolidated stock created for such purpose.

14. The payment by order of the Board for the purposes of the Fire Brigade Act, 1865, up to the thirty-first December one thousand eight hundred and eighty-three, of sums amounting in the whole to the sum of seven thousand two hundred and twenty-two pounds nineteen shillings and eightpence, in excess of the amount of the moneys authorised to be raised and raised by means of the consolidated rate under the authority and subject to the limitations of the Metropolitan Board of Works (Loans) Act, 1869, and of the moneys received by the Board towards their expenses for the said purposes is hereby sanctioned and confirmed; and the Board is authorised to transfer to the Fire Brigade account a sum of seven thousand two hundred and twenty-two pounds nineteen shillings and eightpence from the balance in their hands of rate raised for general purposes.

15. Notwithstanding anything in this Act or in any other Act relating to the Board contained, the Board, with the consent of the Treasury, may from time to time as they think fit raise any part of the moneys which they are by this Act authorised to raise, not exceeding in the whole the sum of five hundred thousand pounds, by the issue of bills under this Act.

16. A bill under this Act (in this Act referred to as a "metropolitan bill") shall be a bill in form prescribed by a regulation made in pursuance of this Act for the payment of the principal sum named therein, in the manner and at the date therein mentioned, so that the date be not less than three nor more than twelve months from the date of the bill.

Interest shall be payable in respect of a metropolitan bill at such rate and in such manner as the Board with the consent of the Treasury may direct.

17. All moneys raised by the issue of any metropolitan bills shall be paid to the Board, and shall be expended by them for the purposes for which the same are by this Act authorised to be raised respectively. The principal money and interest expressed in any metropolitan bill to be payable shall be charged on the consolidated rate, and shall be payable out of the said rate, or as regards principal out of moneys raised by the creation of consolidated stock under this Act for the purpose for which such principal money has been expended, and as regards interest out of the consolidated loans fund.

18. The provisions contained in sections eighteen and nineteen and sections twenty-one and twenty-two of the Act of 1883, with respect to metropolitan bills as defined by that Act, shall extend and apply with respect to metropolitan bills as defined by this Act, and for the purpose of such application the expressions "Metropolitan Bill" and "this Act" in the said sections, shall be construed to mean respectively metropolitan bill as defined by this Act and this Act.

19. For the purpose of paying off the principal money payable in respect of metropolitan bills the Board may raise any sum which they are by this Act empowered to raise by the creation of consolidated stock for the purposes for which such principal money has been expended not exceeding the amount of such principal money, but save as aforesaid the powers given to the Board by this Act to raise moneys for any purposes by the creation of consolidated stock shall be suspended to the amounts and for the periods to and for which moneys are for the time being authorised by the Treasury to be raised for such purposes respectively by the issue of metropolitan bills.

20. The limitation on the borrowing power of the Board contained in section thirty-eight of the Metropolitan Board of Works (Loans) Act, 1869, shall not extend to moneys raised by the Board for purposes mentioned in this Act.

21. All sums received by the Board in respect of interest on or principal of any loan made by them under this Act shall be carried to the consolidated loans fund.

22. During the year ending the thirty-first day of December one thousand eight hundred and eighty-five the Board shall not (except for such temporary period, not exceeding six months, as the Treasury may from time to time sanction) raise otherwise than in conformity with and to the extent mentioned in this Act any money under any powers of borrowing conferred upon the Board either by this Act or any other Act whatsoever: Provided always, that the limitations contained in this section shall not extend to limit or control the raising of moneys under the authority of section thirty-four of the Metropolitan Board of Works (Loans) Act, 1869, or of section eight of the Metropolitan Board of Works (Loans) Act, 1875, for the purposes in the said sections respectively mentioned,

23. Notwithstanding anything in any Act of Parliament contained the prescribed period within which the Board shall absolutely sell and dispose of any lands acquired by the Board for the purposes of any street improvement or widening, or for the purposes of any approach to any bridge, and not required for such purposes under any Act of Parliament passed before the first day of January one thousand eight hundred and eighty-one, shall be the sixth day of October one thousand nine hundred and twenty-nine, and as to any Act of Parliament passed in or subsequently to the year one thousand eight hundred and eighty-one shall be the first day of February one thousand nine hundred and forty-one, being the respective dates at which the consolidated stocks raised to defray the expenses of the Board in carrying into effect the said purposes, are respectively by law required to be redeemed. Provided always, that the Board may sell and dispose of any such superfluous lands at any time within the respective periods herein-before prescribed. All moneys received by the Board from the sale or disposition of such superfluous lands shall (except where otherwise specially provided by any Act) be carried by the Board to the Consolidated Loans Fund.

SCHEDULES.

FIRST SCHEDULE.

NEW MONEY POWERS CONFERRED IN THIS ACT.

Section of Act.	Purpose.	Amount. £	s.	d.
	SUPPLEMENTAL UP TO 31ST DECEMBER 1884.			
4	Loans to Guardians (amount already sanctioned, 200,000*l.*)- -	100,000	0	0
5	Loans to Managers of Metropolitan Asylum District (amount already sanctioned, 50,000*l.*) - - - - -	100,000	0	0
	UP TO 31ST DECEMBER 1885.			
6	Metropolitan Board of Works (Bridges) Act, 1884 - - -	31,000	0	0
	Metropolitan Board of Works (Various Powers) Act, 1884 - -	65,000	0	0
	Metropolitan Commons Supplemental Act, 1884 - - -	1,000	0	0
	Metropolitan Board of Works (District Railway Ventilators) Acts, 1883 and 1884 - - - - - - - -	15,000	0	0
	1ST JANUARY TO 31ST DECEMBER 1885.			
7 (*a*)	Fire Brigade - - - - - - - -	35,000	0	0
(*b*)	Parks, commons, and open spaces - - - - -	15,000	0	0
(*c*)	Bridges, including Commutation of Pensions (Act, 1877) - -	20,000	0	0
(*d*)	Bridges (Act, 1881) - - - - - - - -	172,000	0	0
(*e*)	Bridges (Act, 1883) including freeing of East and West Ferry Roads - - - - - - - -	90,000	0	0
(*f*)	Thames River Prevention of Floods - - - - - -	5,000	0	0
(*g*)	Artizans' Dwellings - - - - - - -	70,000	0	0
(*h*)	Streets under Act of 1877 - - - - - -	410,000	0	0
(*i*)	Streets under Act of 1883, including freeing footbridges over canal	200,000	0	0
(*k*)	Improvements under the Metropolis Management Act, 1855, the Metropolis Management Amendment Act, 1862, and the Metropolitan Board of Works (Various Powers) Act, 1882 - -	100,000	0	0
8	Main Drainage - - - - - - - -	290,000	0	0
9	Loans to vestries and district boards - - - -	200,000	0	0
	Loans to other public bodies - - - - - -	100,000	0	0
10	Loans to Guardians - - - - - - -	200,000	0	0
11	Loans to Managers of Metropolitan Asylum District - -	150,000	0	0
12	Loans to School Board for London - - - - -	700,000	0	0
	AMOUNTS included above which are re-grants of borrowing power previously granted: £ s. d.			
7 (*a*)	Fire Brigade - - - - - 25,689 0 0			
(*b*)	Parks, commons, and open spaces - - 10,284 0 0			
(*c*)	Bridges Act, 1877 - - - - 20,000 0 0			
(*d*)	Bridges Act, 1881 - - - - 136,466 0 0			
(*e*)	Bridges Act, 1883 - - - - 90,000 0 0			
(*f*)	Thames River, Prevention of Floods - - 5,000 0 0			
(*g*)	Artizans' Dwellings - - - - 11,675 0 0			
(*h*)	Streets Act, 1877 - - - - 286,298 0 0			
(*i*)	Streets Act, 1883 - - - - 200,000 0 0			

Section of Act.	Purpose.	£ s. d.	Amount. £ s. d.
(k)	Improvements under Metropolis Management Act, 1855, Metropolis Management Amendment Act, 1862, and Metropolitan Board of Works (Various Powers) Act, 1882 -	73,020 0 0	
8	Main Drainage - - - - -	69,598 0 0	
9	Loans to vestries and district boards - -	10,500 0 0	
	Loans to other public bodies - - -	26,500 0 0	
10	Loans to Guardians - - - -	1,600 0 0	
11	Loans to Managers of Metropolitan Asylum District - - - - -	14,500 0 0	
			981,130 0 0
	New borrowing powers— For Board £ 590,970 0 0 For Loans 1,496,900 0 0		2,087,870 0 0

SECOND SCHEDULE.

Parks and Open Spaces Acts.

The Finsbury Park Act, 1857, 20 & 21 Vict. c. cl.
,, Southwark Park Act, 1864, 27 Vict. c. iv.
,, Gardens in Towns Protection Act, 1863, 26 Vict. c. 13.
,, Leicester Square Act, 1874, 37 Vict. c. x.
,, Metropolitan Open Spaces Act, 1877, 40 & 41 Vict. c. 35.
,, Metropolitan Commons Act, 1866, 29 & 30 Vict. c. 122.
,, ,, ,, ,, Amendment Act, 1869, 32 & 33 Vict. c. 107.
,, ,, ,, ,, 1878, 41 & 42 Vict. c. 71.
,, ,, ,, Supplemental Act, 1871 (Blackheath), 34 & 35 Vict. c. lvii.
,, ,, ,, ,, ,, 1871 (Shepherd's Bush), 34 & 35 Vict. c. lxiii.
,, ,, ,, ,, ,, 1872 (Hackney Commons), 35 & 36 Vict. c. xliii.
,, ,, ,, ,, ,, 1873 (Tooting Beck Common), 36 & 37 Vict. c. lxxxvi.
,, Metropolitan Board of Works Act, 1874 (Finsbury Park) 37 & 38 Vict. c. xcvii.
,, Metropolitan Board of Works (Various Powers) Act, 1875 (Tooting, Graveney Common, and Finsbury Park), 38 & 39 Vict. c. clxxix. s. 14.
,, Hampstead Heath Act, 1871, 34 & 35 Vict. c. lxxvii.
,, Metropolitan Commons Supplemental Act, 1877 (Clapham Common and Bostall Heath), 40 & 41 Vict. c. cci.
,, Plumstead Common Act, 1878, 41 & 42 Vict. c. cxlv.
,, Wormwood Scrubs Act, 1879, 42 & 43 Vict. c. clx.
,, Metropolitan Commons Supplemental Act, 1881 (Brook Green, Eel Brook Common, &c.), 44 Vict. c. xviii.
,, Metropolitan Board of Works (Hackney Commons) Act, 1881, 44 & 45 Vict. c. cxlvii.
,, Metropolitan Open Spaces Act, 1881, 44 & 45 Vict. c. 34.
,, Various Powers Act, 1882 (Peckham Rye and Tooting Beck), 45 & 46 Vict. c. lvi.

CHAP. 51.

Prison Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Construction and short title.*
2. *Explanation as to power of Secretary of State to enlarge and build new prisons.*

An Act to remove doubts as to the powers of the Secretary of State in relation to the altering, enlarging, rebuilding, and building of Prisons, and appropriating any Building for a Prison. (7th August 1884.)

WHEREAS under the Prison Act, 1865, every prison authority had power to alter, enlarge, or rebuild any of its prisons, and to build other prisons in lieu of or in addition to any subsisting prisons, if the necessity so to do was shown, and the approval of the Secretary of State obtained, and the other conditions complied with, and doubts have arisen as to whether the Prison Act, 1877, enables the Secretary of State to exercise the said power, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be construed as one with the Prison Act, 1877.

This Act may be cited as the Prison Act, 1884, and this Act and the Prison Act, 1877, may be cited together as the Prison Acts, 1877 and 1884.

2.—(1.) The Secretary of State, with the approval of the Treasury, may alter, enlarge, or rebuild any prison, and build any new prison which appears to be necessary, and for that purpose shall have all the powers conferred by the Prison Act, 1865, for the like purpose on a prison authority who had obtained the sanction of a Secretary of State.

(2.) The Secretary of State, in lieu of building, may by such declaration as herein-after mentioned, appropriate as a prison any suitable building or part of a building vested in him or under his control, including any prison for convicts under the superintendence of the directors of convict prisons which is situate in England.

(3.) The Secretary of State may from time to time declare that any building or part of a building built for or appropriated as a prison in pursuance of this Act shall, and the same accordingly shall, be a prison under the Prison Act, 1865, and the Prison Act, 1877, and be within the jurisdiction of the Prison Commissioners, and be a prison for the county and prison jurisdiction named in the declaration; such declaration may be at any time revoked by the Secretary of State, but while in force shall have full effect.

Provided that nothing in any such declaration shall alter the legal estate in any building.

(4.) Any act of the Secretary of State done before the passing of this Act, which if done after the passing of this Act would have been valid, shall be as valid as if it had been done in pursuance of this Act.

(5.) There shall be repealed sections twenty-three to twenty-nine, both inclusive, of the Prison Act, 1865, without prejudice to any right acquired or liability incurred under those sections.

CHAP. 52.

Annual Turnpike Acts Continuance Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Schedule* 1.
2. *Schedule* 2.
3. *Schedule* 3.
4. *Schedule* 4.
5. *Schedule* 5. *Acts relating to the Shrewsbury and Holyhead road partially repealed.*

6. *Schedule 5. Acts relating to the Shrewsbury and Holyhead road to continue in force until November 1, 1890, so far as regards certain portions of the road.*
7. *Power to borrow money for repairs of certain portions of Shrewsbury and Holyhead road.*
8. *Interpretation.*
9. *Schedule 6.*
10. *Continuance of all other Turnpike Acts.*
11. *Extent of Act.*
12. *Short title.*
SCHEDULES.

An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith.

(7th August 1884.)

WHEREAS it is expedient to continue for limited times some of the Acts herein-after specified, and to repeal others, and to make further provisions in respect to certain turnpike roads:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts specified in the first and second columns of the First Schedule annexed hereto shall continue in force until the dates respectively specified in the third column thereof, and no longer.

2. The Acts specified in the first and second columns of the Second Schedule annexed hereto shall be repealed on and after the dates respectively specified in the third column thereof.

3. The Acts specified in the first and second columns of the Third Schedule annexed hereto shall, so far as the same are now in force, be repealed on and after the first day of September one thousand eight hundred and eighty-four, and all debts then remaining unpaid in respect of principal moneys borrowed on the credit of the tolls of the Ladykirk and Norham Bridge Trust under the Act of the session of the first and second years of the reign of Her present Majesty, chapter sixty-eight (local), together with all arrears of interest due in respect of such debts, shall thereupon be extinguished.

4. The Acts specified in the first and second columns of the Fourth Schedule annexed hereto shall, to the extent specified in the third column thereof, as from the date specified in the fourth column thereof and subject to the modifications specified in the fifth column thereof, continue in force until the first day of November one thousand eight hundred and ninety, and no longer.

Provided that the arrears of interest due in respect of any principal moneys charged or secured upon the revenues of the Haw Bridge Trust, under the Act of the Session of the fifteenth year of the reign of Her present Majesty, chapter fifty-nine (local), and remaining unpaid on the first day of November one thousand eight hundred and eighty-four, shall thereupon be extinguished.

5. The Acts specified in the Fifth Schedule annexed hereto shall be repealed on and after the first day of November one thousand eight hundred and eighty-four, so far as they relate to the portions of the road from Shrewsbury to Holyhead, which are situate in the counties of Denbigh and Merioneth, and that portion of the said road situate in the county of Carnarvon which lies between the boundary of the county at or near Pontfadoc Bridge, and the boundary of the county at or near Hendre Issa.

Provided that each of the several portions of the road in relation whereto the said Acts are repealed by this section shall upon such repeal become a main road within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and in conformity with and subject to the provisions of that Act one half of the expenses incurred from and after the first day of November one thousand eight hundred and eighty-four by the highway authority in the maintenance of such main road shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority.

6. The said Acts specified in the Fifth Schedule annexed hereto shall, so far as they relate to the portion of the road in the county of Carnarvon which is situate between the boundary of the county at or near Bettws-y-coed and the Menai Bridge and the portion of the road in the county of Anglesey, continue in force until the first day of November one thousand eight hundred and ninety.

Provided as follows:—

(1.) That from and after the first day of November one thousand eight hundred and eighty-four the Commissioners by and under whom the portions of the road specified in this section are now maintained and repaired shall be discharged from and shall cease to carry into execution any of the trusts and powers vested in them in respect of the said portions of the road, and from and after the first day of November one thousand eight hundred and eighty-four and until the first day of November one thousand eight hundred and ninety each of the said portions of the road shall be vested in the county authority of the county in which the same is situate, and such county authority shall, so far as regards the portion of the road transferred to them, have, exercise, and be subject to all the powers, rights, duties, capacities, liabilities, obligations, and property, now exercisable by attaching to or vested in the said Commissioners in relation thereto.

(2.) That the tolls levied by the county authority shall be applied by them in repairing, maintaining, and improving the portion of the road vested in them by this section, and in defraying such other charges in connexion therewith as would, but for the passing of this Act, be payable by the Commissioners aforesaid.

(3.) That so far as the toll income and other receipts of the county authority in respect of the portion of the road vested in them by this section may, from time to time, be insufficient to defray the expenses of the repair and maintenance thereof, and other charges incident thereto, it shall be lawful for the county authority to make good the deficiency out of the county rate.

(4.) That the rentcharge of one hundred and six pounds per annum now payable to the Commissioners aforesaid by the London and North-western Railway Company, under the two hundred and seventy-ninth section of the Act of the seventh and eighth years of the reign of Her present Majesty, chapter sixty-five (local), and the Chester and Holyhead Railway Act, 1858, shall, from and after the first day of November one thousand eight hundred and eighty-four, be applied towards repairing and maintaining the portion of the road in the county of Anglesey, and the embankment mentioned in the said section, and shall, during the period between the first day of November one thousand eight hundred and eighty-four and the first day of November one thousand eight hundred and ninety be paid to the county authority of the said county as the same shall become due. After the expiration of such period the said rentcharge shall be paid to the authority or authorities in the said county liable for the time being to repair and maintain the said portion of the said road or the said embankment.

(5.) That it shall not be necessary for the county authority to appoint a surveyor, clerk, or treasurer, under the powers vested in them by this section, but the duties of such officers shall, so far as may be necessary, be performed by the county surveyor, the clerk of the peace, and the county treasurer respectively.

(6.) That any mortgage debt secured upon the revenues of the road from Shrewsbury to Holyhead, or any part thereof, in respect of which no interest has been claimed within ten years immediately preceding the passing of this Act shall together with the interest thereon be extinguished.

(7.) That for the purpose of enabling the letting by the county authority of Carnarvon or Anglesey of the tolls to be taken on the portion of the road transferred to them, and also of the turnpikes, tollhouses, and weighing-machines vested in them by virtue of this Act, to take effect as from the first day of November one thousand eight hundred and eighty-four, it shall be lawful for them previously to that date to enter into contracts for such letting of the tolls, turnpikes, tollhouses, and weighing-machines, subject to the provisions of the sixty-fifth section of the Act first specified in the Fifth Schedule annexed hereto.

(8.) That it shall not be necessary for the county authority to comply with the requirements of the eighty-ninth section of the Act first specified in the Fifth Schedule annexed hereto; but the clerk of the peace of each of the counties of Anglesey and Carnarvon shall make an annual return to the Local Government Board of the receipts and expenditure of the county authority in respect of the portion of the road under their management, and the Local Taxation Returns Acts, 1860 and 1877, shall apply to such returns in like manner as if they were specifically mentioned in the said Acts, and the said county authorities were mentioned as local authorities in the said Acts.

Nothing in this section shall be deemed to impose upon the county authority any liability in respect of any pension which has been or

may hereafter be awarded to any officer of the said Commissioners.

7. Whereas it appears that the portions of the road from Shrewsbury to Holyhead, and the fences thereof, which are situate in the county of Anglesey and between the Menai Bridge and the boundary of the county of Carnarvon at or near Bettws-y-coed are in many parts out of repair, and considerable sums of money will be required to put the same into an efficient state of repair: And whereas it is expedient that the county authorities should be empowered under certain conditions to borrow money for this purpose: Be it enacted, that each of the county authorities of Anglesey and Carnarvon may, with the consent of the Local Government Board and within two years from the first day of November one thousand eight hundred and eighty-four, borrow, under and subject to the provisions of the Local Loans Act, 1875, on mortgage of the tolls to be taken upon the portion of the road vested in such county authority or of the county rate or of both, such sum as may be required for the purpose aforesaid. Any sum so borrowed shall be repayable together with interest within such period as the Local Government Board may approve, not exceeding six years from the first day of November one thousand eight hundred and eighty-four, and any such sum may be repaid by means of a sinking fund.

8. Terms used in the fifth, sixth, and seventh sections of this Act shall have the same meaning as in the Highways and Locomotives (Amendment) Act, 1878.

9. The Acts specified in the first and second columns of the Sixth Schedule annexed hereto shall, to the extent specified in the third column thereof, continue in force until the dates respectively specified in the fourth column thereof, and no longer, unless Parliament in the meantime otherwise provides.

10. All other Acts now in force for regulating, making, amending, or repairing any turnpike road which will expire at or before the end of the next session of Parliament shall continue in force until the first day of November one thousand eight hundred and eighty-five and to the end of the then next session of Parliament, unless Parliament in the meantime otherwise provides; but this section shall not affect any Act continued to a specified date and no longer, or any Act which is to be repealed at a specified time.

11. This Act shall not apply to Scotland or Ireland.

12. This Act may be cited for all purposes as the Annual Turnpike Acts Continuance Act, 1884.

SCHEDULES.

SCHEDULES 1, 2, 3, 4, 5.

County.	Name of Trust.	No. of Schedule.	No. of Act.
Derby	Birkin Lane	1	10
	Sheffield and Chapel-en-le-Frith	1	9
	Tupton and Ashover	1	10
Gloucester	Haw Bridge	4	20
	Tewkesbury, Severn Bridge	4	19
Hants	Winchester Road	1	7
Kent	Folkestone and Barham	1	6
Lancaster	Dryclough, Shaw, and Rochdale	2	16
	Manchester and Ashton-under-Lyne	1	4
	Manchester and Salter's Brook	1	1, 2
Leicester	Loughborough to Ashby de la Zouch and Cavendish Bridge (United).	2	12, 13, 15
Monmouth	Abergavenny	1	11
Northumberland.	Greenlaw Roads and Coldstream Bridge	3	18
	Ladykirk and Norham Bridge	3	17
Notts	Retford and Gainsborough	1	5
Sussex	New Chappel, Lindfield, and Brighton	1	8
York	Ferrybridge and Boroughbridge	1	3

County.	Name of Trust.	No. of Schedule.	No. of Act.
Anglesey - Carnarvon - Denbigh - Merioneth	Shrewsbury and Holyhead (part) - - -	5	21, 22, 23, 24
Flint - -	Flint, Holywell, and Mostyn - - - -	2	14

FIRST SCHEDULE.

Acts which are to continue in force until the dates specified in each instance and no longer.

1. Date of Act.	2. Title of Act.	3. Date to which Act is to continue in force.
7 Geo. 4. c. xvi. -	1. An Act for more effectually repairing and improving the roads from Manchester in the county palatine of Lancaster to Salter's Brook, in the county palatine of Chester, and for making and maintaining several extensions or diversions of road, and a new branch of road to communicate therewith.	1 November 1884, and no longer.
3 Will. 4. c. lvii. -	2. An Act to amend an Act passed in the seventh year of the reign of His late Majesty King George the Fourth, for repairing the roads from Manchester to Salter's Brook, and for making several roads to communicate therewith, and also for making a certain new extension or diversion of the said roads instead of a certain extension or diversion by the said Act authorised to be made.	1 November 1884, and no longer.
5 & 6 Vict. c. lxxxvi.	3. An Act for repairing, improving, and maintaining the road leading from Ferrybridge, through Wetherby, to Boroughbridge in the county of York.	1 November 1884, and no longer.
14 Vict. c. xli. -	4. An Act to continue the term of the Act of the sixth year of George the Fourth, chapter fifty-one (local), so far as relates to the turnpike road between Manchester and Audenshaw in the parish of Aston-under-Lyne, all in the county palatine of Lancaster, and to make better provision for the repair of the road; and for other purposes.	1 November 1884, and no longer.
24 Vict. c. vi. -	5. An Act to repeal the Act for more effectually repairing and improving the road from the west end of Gainsburgh Bridge to East Retford, and to Grigley-on-the-Hill in the county of Nottingham, and to make other provisions in lieu thereof.	1 November 1884, and no longer.

1. Date of Act.	2. Title of Act.	3. Date to which Act is to continue in force.
25 Vict. c. vi. - -	6. An Act for extending the term and amending the provisions of the Acts relating to the Folkestone to Barham Downs turnpike road in the county of Kent.	1 November 1884, and no longer.
25 Vict. c. xii. - -	7. An Act for the Winchester Road in the county of Southampton.	1 November 1884, and no longer.
25 & 26 Vict. c. lix. -	8. An Act to repeal the Act relating to the New Chappel, Lindfield and Brighton, and Ditcheling and Clayton Roads, and to make other provisions in lieu thereof.	1 November 1884, and no longer.
25 & 26 Vict. c. cxxxiv.	9. An Act to repeal the Act "for repealing two "Acts for repairing the road from Little "Sheffield in the county of York to Sparrow "Pit Gate in the county of Derby, and also "an Act for making a road from Banner "Cross in the West Riding of the county of "York to Fox House in the county of Derby, "and for consolidating the trusts of certain "roads mentioned in the said Acts, and for "amending and making certain other roads "to communicate therewith, and for other "purposes;" and to make other provisions in lieu thereof.	1 November 1884, and no longer.
25 & 26 Vict. c. cxlvii.	10. An Act for more effectually repairing certain roads called "The Tupton and Ashover Road," and "The Birkin Lane Road," in the county of Derby.	1 November 1884, and no longer.
26 Vict. c. lix. - -	11. An Act to continue the Abergavenny Turnpike Trust, excepting certain roads; and for other purposes.	1 November 1885, and no longer.

SECOND SCHEDULE.

Acts which are to be repealed on and after the dates specified in each instance.

1. Date of Act.	2. Title of Act.	3. Date of Repeal.
7 & 8 Geo. 4. c. lxxiv.	12. An Act for more effectually repairing the road from the south-east end of the town of Loughborough, in the county of Leicester, commencing at South Field Lane, to the south end of Cavendish Bridge, in the same county.	25 March 1885.
1 Will. 4. c. lxvii. -	13. An Act for more effectually repairing, widening, and otherwise improving the road from the south-east end of the town of Loughborough, in the county of Leicester, commencing at South Field Lane, to the south end of Cavendish Bridge, in the same county.	25 March 1885.

1. Date of Act.	2. Title of Act.	3. Date of Repeal.
26 Vict. c. xxx. -	14. An Act for more effectually repairing and improving the several roads comprised in the Flint, Holywell, and Mostyn districts of roads; and for reviving and extending the powers for the construction of certain new roads; and for other purposes.	1 November 1884.
26 Vict. c. liii. -	15. An Act for repairing the road leading from Burleigh Bridge, in Loughborough, to Ashby-de-la-Zouch, in the county of Leicester, and also the road branching out of the said road at Coleorton Church to Rempstone, in the counties of Leicester and Nottingham.	25 March 1885.
29 Vict. c. xxi. -	16. An Act to repeal an Act passed in the Seventh year of the reign of His Majesty King William the Fourth, intituled An Act for improving and maintaining the road from Dryclough through Shaw, New Hey, and Milnrow to Rochdale, and other roads in the county of Lancaster, and to grant more effectual powers in lieu thereof; and for other purposes.	1 November 1884.

THIRD SCHEDULE.

Acts which, so far as the same are now in force, are to be repealed on and after the 1st of September 1884.

1. Date of Act.	2. Title of Act.
1 & 2 Vict. c. lxviii.	17. An Act for building a bridge over the River Tweed between Ladykirk, in the county of Berwick, and Norham, in the county of Durham, and for making avenues and approaches thereto.
9 Vict. c. xlvi. -	18. An Act for maintaining the road from Deanburn, in the county of Haddington, through Greenlaw, in the county of Berwick, to Cornhill, in the county of Durham, with branches from Carfrae Mill, through Lauder, from Orange Lane to Swinton, and from Coldstream to Mount Pleasant, all in the county of Berwick; and for maintaining the bridge over the River Tweed at Coldstream.

FOURTH SCHEDULE.

Acts which are to continue in force, subject to modifications, until the 1st November 1890, and no longer.

1. Date of Act.	2. Title of Act.	3. Extent to which the Act is continued.	4. Dates from which Modifications are to commence or be continued.	5. Modifications.
13 & 14 Vict. c. lxvi.	19. An Act for continuing the term of an Act passed in the fourth year of the reign of His late Majesty King George the Fourth, intituled An Act for building a bridge over the River Severn at or near to the Mythe Hill, within the parish and near to the town of Tewkesbury, in the county of Gloucester, to the opposite side of the said river, in the parish of Bushley, in the county of Worcester, and for making convenient roads and avenues to communicate with such Bridge, within the counties of Gloucester and Worcester, and of another Act passed in the seventh year of the reign of His late Majesty King George the Fourth, intituled An Act for altering, amending, and enlarging the powers and provisions of an Act relating to the Tewkesbury Severn Bridge and Roads, for the purpose of paying off the debt now due on the said bridge and roads.	So far as the Act relates to the bridge over the river Severn at or near the Mythe Hill.	The date of the passing of the Annual Turnpike Acts Continuance Act, 1884.	No interest payable. No return toll to be taken for horses drawing.
15 Vict. c. lix.	20. An Act for continuing the term and amending and extending the provisions of the Acts relating to the Haw Passage Bridge in the county of Gloucester.	The entire Act	1 November 1884.	No interest payable. Not less than 60*l.* to be expended in painting the bridge before 1 October 1885.

FIFTH SCHEDULE.

Acts which, so far as they relate to certain portions of the road from Shrewsbury to Holyhead, are to continue in force until the 1st day of November 1890, and which, so far as they relate to other portions of the said road, are to be repealed on the 1st day of November 1884.

1. Date of Act.	2. Title of Act.
59 Geo. 3. c. 30. - -	21. An Act for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon, and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His present Majesty, from the future repair and maintenance thereof; and for altering and repealing so much of the said Acts as affects the said line of road.
59 Geo. 3. c. 48. - -	22. An Act to amend an Act passed in the fifty-fifth year of His present Majesty for granting to His Majesty the sum of twenty-thousand pounds towards repairing roads between London and Holyhead by Chester, and between London and Bangor by Shrewsbury, and for giving additional powers to the Commissioners therein named to build a bridge over the Menai Straits, and to make a new road from Bangor Ferry to Holyhead, in the county of Anglesea.
5 & 6 Will. 4. c. 21. -	23. An Act to amend and alter an Act of the fifty-ninth year of His late Majesty King George the Third, for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His then present Majesty, from the future repair and maintenance thereof; and for repealing so much of the said Acts as affects the said line of road.
3 & 4 Vict. c. 104. -	24. An Act to transfer to the Commissioners of Her Majesty's Woods and Works, and other Commissioners, the several powers now vested in the Commissioners for repairing the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and to amend the London and Holyhead Roads Acts, so far as relates to the Dunstable Road.

SCHEDULE 6.

Acts which, to the extent specified, are to continue in force until the dates specified in each instance and no longer, unless Parliament in the meantime otherwise provides.

County.	Name of Trust.	No. of Act.
Cambridge	Thornset	12
Cornwall	Penzance and Saint Just	10
Derby	Ashborne to Belper Bridge	7
	Cromford and Belper	17
Devon	Combmartin and Ilfracombe	20
Durham	Derwent and Shotley Bridge	19
Gloucester	Forest of Dean	1
Lancaster	Blackburn and Preston	3
	Elton and Blackburn	6
	Moses Gate: Ringley District	18
	Standedge and Oldham and Branches	11
Leicester	Moira and Gresley	14
Northumberland	North Shields and Newcastle-on-Tyne	15
Salop	Wem and Bronygarth, First District	4, 9
York	Leeds and Birstal	8
	Mytholmroyd and Blackstone Edge	16
Denbigh	Llanrwst and Abergele	2
Merioneth	Portmadoc and Beaverpool Bridge	13
Montgomery	Cilgwrgan Bettws and Tregynon	5

SIXTH SCHEDULE.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is continued.	4. Date to which Act is continued.
21 & 22 Vict. c. lxxxvi.	1. An Act to repeal the Act relating to the Dean Forest Turnpike Roads, and to make other provisions in lieu thereof, and to authorise the construction of a new road, and for other purposes.	The entire Act	1 November 1891.
22 & 23 Vict. c. lxxviii.	2. An Act for making a road from Llanrwst to Abergele, and a branch road thereout, in the counties of Denbigh and Caernarvon.	The entire Act	1 November 1885.
22 & 23 Vict. c. xciii.	3. An Act for continuing the term and amending and extending the provisions of the Act relating to the Blackburn and Preston Turnpike Road, and for constructing a bridge over the River Ribble in connexion therewith; and for other purposes.	The entire Act	1 November 1890.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is continued.	4. Date to which Act is continued.
23 Vict. c. viii. -	4. An Act for more effectually repairing the road leading from Wem to the Lime Rocks at Bronygarth in the county of Salop, and for making several lines of road connected with the same in the counties of Salop and Denbigh.	So far as relates to the First District of the Roads, and the road numbered two of the Second District.	1 November 1894.
23 & 24 Vict. c. cviii.	5. An Act for making a turnpike road from Oswestry and Newtown Railway, near Cilgwrgan, in the county of Montgomery, over the River Severn to Tregynon, in the same county.	The entire Act	1 November 1891.
24 Vict. c. xx. -	6. An Act to repeal an Act passed in the tenth year of the reign of King George the Fourth, intituled An Act for repairing, improving, and maintaining in repair the road from Brandlesome Moss Gate, in the township of Elton, to the Duke of York Public House, in the township of Blackburn, and a branch road therefrom, all in the County Palatine of Lancaster; and to make other provisions in lieu thereof.	The entire Act	1 November 1887.
25 & 26 Vict. c. ciii.	7. An Act to continue the Ashborne and Belper Turnpike Trust, in the county of Derby, and for other purposes.	The entire Act	1 November 1888.
25 & 26 Vict. c. cxvii.	8. An Act to repeal an Act passed in the first year of the reign of His Majesty King William the Fourth, intituled An Act for amending and maintaining the Turnpike Road from and out of the road leading from Quebec in Leeds, to Homefield Lane End in Wortley, to communicate with the road leading from Huddersfield to Birstal at the "Coach and Horses" public house in Birstal, in the West Riding of the county of York, and granting more effectual powers in lieu thereof.	The entire Act	1 November 1888.
25 & 26 Vict. c. cxxx.	9. An Act to amend "The Wem and Bronygarth Roads Act, 1860," and to confer further powers in relation to the said roads.	So far as relates to the First District of the roads, and the road numbered two of the Second District.	1 November 1894.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is continued.	4. Date to which Act is continued.
26 Vict. c. xxvii.	10. An Act for making a turnpike road from Penzance to Saint Just in Penwith in the county of Cornwall, with branches, and for the adoption, alteration, and improvement, for the purposes thereof, of certain public highways; and for other purposes.	The entire Act	1 November 1885.
26 & 27 Vict. c. cl.	11. An Act to repeal an Act passed in the seventh and eighth years of the reign of His Majesty King George the Fourth, intituled An Act for more effectually repairing and improving the road from Standedge in Saddleworth in the county of York, to Oldham in the county of Lancaster, and other roads in the said county of York, and for making and maintaining two new branches to communicate therewith, and granting more effectual powers in lieu thereof; and for other purposes.	The entire Act	1 November 1885.
27 & 28 Vict. c. xxxvii.	12. An Act to extend the term and amend the provisions of the Act relating to the Thornset Turnpike Roads.	The entire Act	1 November 1886.
27 & 28 Vict. c. liv.	13. An Act for the Portmadoc and Beaver Pool Bridge Turnpike Roads in the counties of Merioneth and Carnarvon.	The entire Act	1 November 1886.
27 & 28 Vict. c. lxx.	14. An Act for more effectually repairing certain roads from Scaddow Gate in the parish of Ticknall, to the Burton-upon-Trent and Ashby Road, and other roads connected therewith, and for making new branches of road, in the counties of Derby and Leicester; and for other purposes.	The entire Act	1 November 1886.
27 & 28 Vict. c. cii.	15. An Act for repairing the road from North Shields in the county of Northumberland, to the town of Newcastle-upon-Tyne; and for other purposes.	The entire Act	1 November 1886.
27 & 28 Vict. c. civ.	16. An Act to grant a further term in the road from or near Mytholm Royd Bridge in the West Riding of the county of York, communicating with the road at or near to the sixth milestone from Rochdale in the county of Lancaster, and further powers for the management thereof; to alter the rights of the existing creditors of the trust, and to repeal the existing Act, and for other purposes.	The entire Act	1 November 1886.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is continued.	4. Date to which Act is continued.
28 & 29 Vict. c. cxliv.	17. An Act to extend the term and amend the provisions of the Act relating to the Cromford and Belper Turnpike Road.	The entire Act	1 November 1887.
28 & 29 Vict. c. cccxxxvi.	18. An Act to repeal the Act relating to the Moses Gate and Ringley branch Turnpike Roads, and to make other provisions in lieu thereof; and to authorise new works; and for other purposes.	So far as relates to the Ringley branch.	1 November 1887.
29 Vict. c. vii. -	19. An Act for repairing the road from the Gateshead and Hexham Turnpike Road at or near to Axwell Park Gate on the River Derwent in the township of Winlaton, in the parish of Ryton, in the county of Durham, to the village of Shotley Bridge in the said county of Durham.	The entire Act	1 November 1888.
29 & 30 Vict. c. cxvi.	20. An Act for making and maintaining a new road between Combmartin and Ilfracombe, both in the county of Devon.	The entire Act	1 November 1888.

CHAP. 53.

Expiring Laws Continuance Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Continuance of Acts in schedule.*
SCHEDULE.

An Act to continue various expiring Laws. (7th August 1884.)

WHEREAS the several Acts mentioned in column one of the schedule to this Act are, to the extent specified in column two of that schedule, limited to expire on the thirty-first day of December one thousand eight hundred and eighty-four:

And whereas it is expedient to provide for the continuance as in this Act mentioned of such Acts, and of the enactments amending the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Expiring Laws Continuance Act, 1884.

2. The Acts mentioned in column one of the schedule to this Act, in so far as they are temporary in their duration, shall, to the extent in column two of the said schedule mentioned, be continued until the thirty-first day of December one thousand eight hundred and eighty-five and any unrepealed enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

SCHEDULE.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(1) 5 & 6 Will. 4. c. 27. Linen, Hempen, Cotton, and other Manufactures (Ireland).	The whole Act so far as it is not repealed.	3 & 4 Vict. c. 91. (except ss. 18 and 23). 5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47. 30 & 31 Vict. c. 60.
(2) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemption.	The whole Act.	—
(3) 4 & 5 Vict. c. 35. Copyhold, Inclosure, and Tithe Commissioners (now Land Commissioners).	So much as relates to the appointment of and the period for holding office by Land Commissioners and other officers.	14 & 15 Vict. c. 53. 25 & 26 Vict. c. 73. 45 & 46 Vict. c. 38. s. 48.
(4) 4 & 5 Vict. c. 59. Application of Highway Rates to Turnpike Roads.	The whole Act.	—
(5) 10 & 11 Vict. c. 32. Landed Property Improvement (Ireland).	As to powers of Commissioners -	12 & 13 Vict. c. 59. 13 & 14 Vict. c. 31. 25 & 26 Vict. c. 29. 29 & 30 Vict. c. 40.
(6) 10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	As to provisions continued by 21 & 22 Vict. c. 50.	—
(7) 11 & 12 Vict. c. 32. County Cess (Ireland).	The whole Act - - -	20 & 21 Vict. c. 7.
(8) 14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	The whole Act so far as it is not repealed.	17 & 18 Vict. c. 116. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124. 31 & 32 Vict. c. 114. s. 10.
(9) 17 & 18 Vict. c. 102. Corrupt Practices Prevention.	So much as is continued by the Corrupt and Illegal Practices Prevention Act, 1883.	26 & 27 Vict. c. 29. s. 6. 31 & 32 Vict. c. 125. 46 & 47 Vict. c. 51.
(10) 23 & 24 Vict. c. 19. Dwellings for Labouring Classes (Ireland).	The whole Act.	—
(11) 24 & 25 Vict. c. 109. Salmon Fishery (England).	As to appointment of inspectors, s. 31.	—
(12) 26 & 27 Vict. c. 105, Promissory Notes.	The whole Act.	—

1. Original Acts.	2. How far continued.	3. Amending Acts.
(13) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Exchange (Ireland).	The whole Act.	——
(14) 28 & 29 Vict. c. 46. Militia Ballots Suspension.	The whole Act.	——
(15) 28 & 29 Vict. c. 83. Locomotives on Roads.	The whole Act so far as it is not repealed.	41 & 42 Vict. c. 58. 41 & 42 Vict. c. 77. (Part II.)
(16) 29 & 30 Vict. c. 52. Prosecution Expenses.	The whole Act.	——
(17) 31 & 32 Vict. c. 125. Parliamentary Elections.	So much as is continued by the Corrupt and Illegal Practices Prevention Act, 1883.	42 & 43 Vict. c. 75. 46 & 47 Vict. c. 51.
(18) 32 & 33 Vict. c. 21. Election Commissioners Expenses.	The whole Act - - -	34 & 35 Vict. c. 61.
(19) 32 & 33 Vict. c. 56. Endowed Schools (Schemes).	As to the powers of making schemes, and as to the payment of the salaries of additional Charity Commissioners and additional secretary.	36 & 37 Vict. c. 87. 37 & 38 Vict. c. 87.
(20) 34 & 35 Vict. c. 87. Sunday Observance Prosecutions.	The whole Act.	——
(21) 35 & 36 Vict. c. 33. Parliamentary and Municipal Elections (Ballot).	The whole Act so far as it is not repealed.	45 & 46 Vict. c. 50. (Municipal Elections.)
(22) 36 & 37 Vict. c. 48. Regulation of Railways.	The whole Act - - -	37 & 38 Vict. c. 40. (Part II.)
(23) 38 & 39 Vict. c. 48. Police Expenses.	The whole Act.	——
(24) 38 & 39 Vict. c. 84. Returning Officers Expenses.	The whole Act.	——
(25) 39 & 40 Vict. c. 21. Juries (Ireland).	The whole Act.	——
(26) 41 & 42 Vict. c. 41. Returning Officers Expenses (Scotland).	The whole Act.	——

1. Original Acts.	2. How far continued.	3. Amending Acts.
(27) 41 & 42 Vict. c. 72. Sale of Liquors on Sunday (Ireland).	The whole Act.	—
(28) 43 Vict. c. 18. Parliamentary Elections.	The whole Act so far as it is not repealed.	—
(29) 46 & 47 Vict. c. 35. Diseases Prevention, Metropolis.	The whole Act.	—
(30) 46 & 47 Vict. c. 51. Corrupt and Illegal Practices Prevention.	The whole Act.	—

CHAP. 54.

Yorkshire Registries Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Interpretation.*

Registration.

4. *Assurances and wills may be registered.*
5. *Mode of registration.*
6. *Memorials.*
7. *Memorandum of lien or charge.*
8. *Deeds, &c. not to be enrolled unless originals, &c. produced.*
9. *Endorsement on deed or will after registration.*
10. *Caveats.*
11. *Notices of wills not proved, &c.*
12. *Affidavit of intestacy.*
13. *Where by any Act any lands are vested upon the payment of money, &c. an affidavit of the vesting may be registered.*
14. *Priority of assurances and wills.*
15. *Registration to be actual notice.*
16. *Protection by legal estate and tacking not to be allowed.*
17. *Rights of purchasers to relief to be the same as those of the persons through whom they claim.*
18. *Registration.*
19. *Searches may be made and copies taken by any person.*
20. *Official searches.*
21. *Record of official searches.*
22. *Certified copies.*
23. *Protection of solicitors, trustees, &c. in the case of certificates, &c.*
24. *Pages of register to be numbered and signed.*
25. *Rectification of register by Court.*
26. *Entries in respect of statutory receipts.*
27. *Registrar need not register instrument not duly stamped.*

28. *Act not to extend to copyhold or certain leasehold interest.*
29. *Shares in companies not to be affected.*
30. *Saving as to Crown lands.*

Register Offices.

31. *Offices for the registration of deeds.*
32. *Seal of register office.*
33. *Vesting of register offices, &c. in clerk of peace.*
34. *Building, &c. of offices.*
35. *Rules.*
36. *Existing registrars to be first registrars under this Act.*
37. *Appointment of officers, &c.*
38. *Fees.*
39. *Unauthorised fees not to be taken.*
40. *Application of fees.*
41. *Accounts.*
42. *Expenses to be defrayed out of county rate.*

Existing Registries.

43. *Registering of memorials, &c. where assurance, &c. executed before commencement of Act, &c.*
44. *Books, &c. connected with old registries.*
45. *Copies of old registers.*

Miscellaneous.

46. *Frauds by registrar, &c.*
47. *Falsely swearing under this Act to be punished as perjury.*
48. *Swearing of affidavits.*
49. *Actions for neglect, &c. to be brought against registrar.*
50. *Protection of local authority and the officers from personal liability.*
51. *Repeal.*

SCHEDULES.

An Act to consolidate and amend the law relating to the Registration of Deeds and other matters affecting lands and hereditaments within the North, East, and West Ridings of the County of York.

(7th August 1884.)

WHEREAS in pursuance of the Acts mentioned in the First Schedule to this Act register offices have been established for the registration of deeds, conveyances, wills, incumbrances, and other matters affecting lands and hereditaments within the three ridings of the county of York, and the town and county of the town of Kingston-upon-Hull:

And whereas it is expedient to consolidate and amend the said Acts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Yorkshire Registries Act, 1884.

2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-five, which day is in this Act referred to as the commencement of this Act, but any orders or rules and any appointment to any office may be made under this Act at any time after the passing thereof, but such orders or rules shall not take effect until the commencement of this Act.

3. In this Act, unless the context otherwise requires—

The expression "north riding" means the north riding of the county of York;

The expression "east riding" means the east riding of the county of York, and for the purposes of this Act lands within the town or county of Kingston-upon-Hull shall be deemed to be lands within the east riding;

The expression "west riding" means the west riding of the county of York, and for the purposes of this Act lands within the

wapentake known as "the Ainsty" shall be deemed to be lands within the west riding;

The expression "the three ridings" means the north riding, the east riding, and the west riding as above defined;

The expression "county authority" means, as respects each of the ridings, the justices of the peace of the said riding in general or quarter sessions assembled;

The expression "county rate" includes any rate in the nature of a county rate which the county authority may have power to levy for purposes similar to those for which a county rate may now be levied;

The expression "existing Registry Acts" means the Acts specified in the First Schedule to this Act annexed;

The expressions "existing registry" and "existing registrar" mean the registry and registrar for the purposes of the existing Registry Acts within the ridings respectively immediately before the commencement of this Act;

The expression "registrar" shall for the purpose of the discharge of any duties imposed on any registrar by this Act include any deputy registrar who under the provisions of this Act or under any provisions of any of the existing Registry Acts for the time being in force is empowered to perform any such duties;

The expression "land" includes land and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, and also an undivided share in land;

The expression "parish" means any parish, township, or place for which a separate poor rate can be made;

The expression "conveyance" includes any assignment, appointment, lease, or settlement made by deed on a sale, mortgage, demise, or settlement of any land or appointment of a new trustee in respect thereof, which has been executed by one or more of the parties by whom any interest in such land is thereby conveyed;

The expression "mortgage" includes any charge on any land for securing money or money's worth, and any transfer of a mortgage;

The expression "enlargement of term into fee simple" means any enlargement of the residue of a term subsisting in any land into a fee simple made by deed in pursuance of the Conveyancing and Law of Property Act, 1881, or any Act or Acts amending the same;

The expression "memorandum of charge" shall include any memorandum of a lien or charge on any land which may be registered under the provisions of this Act;

The expression "statutory receipt" means any receipt the endorsement of which under any statute on any conveyance by way of mortgage vacates the same and transfers any estate in the property therein comprised without any re-conveyance;

The expression "will" includes codicil;

The expression "probate" means the probate of any will or any letters of administration with the will annexed, or a copy thereof stamped with the seal of the Probate Division of the High Court of Justice, or a certified office copy thereof;

The expression "award of the Land Commissioners" means any award made by the Land Commissioners for England under any of the Inclosure Acts, 1845 to 1876, or any Act or Acts amending the same;

The expression "order of the Land Commissioners" means an absolute order of the Land Commissioners for England, whereby a rentcharge is created on land in pursuance of the Improvement of Land Act, 1864, or any Act or Acts amending the same;

The expression "order of a court" means any judgment, decree, writ of execution or sequestration, adjudication in bankruptcy, or other order or process of or issuing from a court of competent jurisdiction or any order of the Charity Commissioners whereby any interest in any land is or may be affected;

The expression "assurance" shall include any conveyance, enlargement of term into fee simple, memorandum of charge, deed of consent to the discharge of a trustee, statutory receipt, Private Act of Parliament, award or order of the Land Commissioners, order of a court, certificate of appointment of trustee in bankruptcy, or affidavit of vesting under any Act of Parliament.

Registration.

4. From and after the commencement of this Act, and subject to the provisions of this Act and any rules made under this Act, all assurances executed or made after the commencement of this Act, and all wills of any testators dying after the commencement of this Act, by which any lands within any of the three ridings are affected may be registered under this Act.

5. The registration of any assurance, will, or other instrument under this Act, shall be effected in the following manner:

(1.) There shall be presented for enrolment in the register—

(A.) In the case of deeds, wills, or other assurances which may be registered under this Act, except private Acts of Parliament or memoranda of charge, or affidavits of vesting under any Act of Parliament, a memorial thereof prepared in accordance with the provisions of this Act and any rules made thereunder, or such deed, will, or other assurance as aforesaid, at full length at the option of the person registering the same;

(B.) In the case of a private Act of Parliament, a Queen's Printer's copy of such Act, or a memorial thereof prepared in accordance with the provisions of this Act, and any rules made thereunder;

(C.) In the case of any memorandum of charge, caveat, notice, or affidavit which may be registered under this Act, such memorandum, caveat, notice, or affidavit at full length;

(2.) Immediately on receipt of any instrument or memorial thereof presented for enrolment in the register, an entry shall be made in a book of reference to be kept for that purpose, setting forth—

(A.) The date of the instrument.

(B.) (1.) In the case of a deed, the names of the parties.

(2.) In the case of a will, the name of the testator.

(3.) In the case of an order of Court or certificate of appointment of trustee in bankruptcy, the title of the cause or matter wherein the same purports to be made, and the names of the parties thereto, if any.

(4.) In the case of a private Act of Parliament, the title of the Act.

(5.) In the case of an order of the Land Commissioners, the name of the landowner whose lands are charged.

(6.) In the case of an award of the Land Commissioners, the names of the persons in whose favour the award is made.

(7.) In the case of a memorandum of charge, the name of the landowner whose lands are charged.

(8.) In the case of a caveat, the names of the persons by and in whose favour the same is given.

(9.) In the case of a notice of a will the names of the testator, and of the person by whom such notice is given.

(10.) In the case of an affidavit of intestacy, the names of the deceased and of the deponent.

(11.) In the case of an affidavit of vesting, the title of the Act of Parliament under which such vesting has been effected, and the name of the deponent.

(C.) The names of all the parishes in which the lands affected by such instrument are situate.

(D.) The volume, page, and number of the register where such instrument or memorial thereof is, or is intended to be enrolled.

(E.) The date, hour, and minute when such instrument or memorial thereof was received at the office for the purpose of registration.

And upon such entry being duly made, such instrument shall be deemed to have been registered under this Act, and the date, hour, and minute so entered as aforesaid shall be deemed for all purposes to be the date of registration, provided that if such entry be duly made in respect of part only of the lands affected by any such instrument, such instrument shall as to the lands with respect to which such entry has been duly made, but not as to the residue of the lands affected thereby, be deemed to have been registered under this Act: Provided that if such instrument shall afterwards be registered as to the omitted lands, a note of such registration and of the date thereof shall be made in the book of reference, and such registration shall thenceforth be valid and effectual as to such omitted lands.

(3.) As soon as conveniently may be after the presentation of any instrument or memorial thereof for enrolment in the register, such instrument or memorial thereof shall be duly enrolled in the register and the volume, page, and number of the register where the same is so enrolled, shall correspond with the entry made or to be made in the book of reference relating to such instrument, and an entry shall be made in the margin of the register opposite any instrument or memorial thereof so enrolled of the date of registration.

6. Except so far as may be otherwise expressly provided by this Act, or by any rules to be made under this Act, the memorials of all assurances or wills which are enrolled in the register under this Act shall be subject to the following regulations:

(1.) In the case of a deed the memorial shall be under the hand and seal of some or one of the parties thereto, or of some or one

of their or his heirs, executors, administrators, guardians, or trustees, and shall be attested by one or more witnesses, one of whom at least shall have been a witness to the execution of the deed, and shall contain—

(A.) The date of the deed:

(B.) The name and description of the residence and occupation of all the parties to the deed so far as set out therein:

(C.) The names and descriptions of the residences and occupations of all the witnesses to the execution of the deed so far as appears therein:

(D.) A description of all the lands affected by the deed within the riding, and the names of all the parishes wherein the same are situate, in such manner as the same are expressed or mentioned in such deed, or to the same effect.

(E.) The name and description of the residence and occupation of the person on whose behalf the memorial is to be registered.

(2.) In the case of a will the memorial shall be under the hand and seal of one of the trustees or executors of the said will, or of some one or more persons claiming an interest thereunder in some of the lands affected thereby within the riding, and shall be attested by one or more witnesses, and shall contain—

(A.) The date of the will:

(B.) The date of the death of the testator:

(C.) The name and description of the residence and occupation of the testator so far as set out in the will:

(D.) The names and descriptions of the residences and occupations of all the witnesses to such will so far as appears therein:

(E.) A description of all the lands affected by the will within the riding, and the names of all the parishes wherein the same are situate, so far and in such manner as the same are expressed or mentioned in the will or to the same effect:

(F.) The name and description of the residence and occupation of the person on whose behalf the memorial is to be registered.

(3.) In the case of an order of a court or a certificate of appointment of trustee in bankruptcy the memorial shall be under the hand and seal of some party claiming to be interested in some lands affected thereby within the riding, and shall contain—

(A.) The date of the order or certificate;

(B.) The title of the cause or matter wherein the same purports to be made;

(C.) The names of the parties (if any) to such cause or matter;

(D.) So much of the order or certificate itself as affects any lands within the riding or describes or defines such lands;

(E.) The name and description of the residence and occupation of the person on whose behalf the memorial is to be registered.

(4.) In the case of a Private Act of Parliament the memorial shall be under the hand and seal of some party claiming to be interested in some lands affected thereby within the riding, and shall contain—

(A.) The date and title of the Act:

(B.) So much of the Act itself as affects any lands within the riding or describes or defines such lands.

(C.) The name and description of the residence and occupation of the person on whose behalf the memorial is to be registered.

(5.) In the case of an award of the Land Commissioners the memorial shall be under the hand and seal of some party claiming to be interested in some lands affected thereby within the riding, and shall contain—

(A.) The date of the award.

(B.) The names of all the persons in whose favour the award is made.

(C.) A description of all the lands affected by the award within the riding, and the names of all the parishes wherein the same are situate.

(D.) The name and description of the residence and occupation of the person on whose behalf the memorial is to be registered.

(6.) In the case of an order of the Land Commissioners the memorial shall be under the hand and seal of some party claiming to be interested in some lands affected thereby within the riding, and shall contain—

(A.) The date of the order:

(B.) The name and description of the residence and occupation of the landowner whose lands are charged thereby:

(C.) The particulars of the lands charged within the riding:

(D.) The amount of the rentcharge:

(E.) The period during which the same is made payable.

(F.) The name and description of the residence and occupation of the person on whose behalf the memorial is to be registered.

7. Where any lien or charge on any lands within any of the three ridings is claimed in respect of any unpaid purchase money or by reason of any deposit of title deeds, a memorandum of such lien or charge, signed by the person against whom such lien or charge is claimed, may be registered by any person claiming to be interested therein.

Every such memorandum shall state—

(A.) The date from which such lien or charge is claimed;

(B.) The name and description of the residence and occupation of the landowner whose lands are charged therewith;

(C.) A description of all the lands within the riding affected by such lien or charge, and the names of all the parishes wherein the same are situate;

(D.) The nature of the lien or charge claimed on or in such lands;

(E.) The name, and a description of the residence and occupation of the person registering such memorandum;

and no such lien or charge shall have any effect or priority as against any assurance for valuable consideration which may be registered under this Act, unless and until a memorandum thereof has been registered in accordance with the provisions of this section.

8. No deed, will, order of a court, certificate of appointment of trustee in bankruptcy, private Act of Parliament, award, or order of the Land Commissioners shall be registered under this Act unless the original or one of the originals of such deed, or the original or the probate of such will, or an office copy of such order of court or of such certificate, or a copy of such Act printed by Her Majesty's printers, or a copy of the award duly sealed with the seal of the Commissioners, or a copy thereof signed by the clerk of the peace or his deputy, purporting the same to be a true copy, or the absolute order of the Land Commissioners duly sealed with the seal of the said Commissioners, as the case may be, is produced to the registrar at the time of such registration.

9. Immediately after the registration of any deed, will, order of court, certificate of appointment of trustee in bankruptcy, private Act of Parliament, award, order of the Land Commissioners, or memorandum of charge, under this Act there shall be endorsed on the original deed or the original will or probate thereof, or an office copy of order of court or certificate, or the copy of the Act or award, or the absolute order, or on the memorandum of charge, produced to the registrar a certificate, stating the date of registration and the volume, page, and number in the register in which the same or a memorial thereof is or is intended to be enrolled; and the registrar shall sign the said certificate and seal the same with the seal of the registry, and every certificate so signed and sealed shall be receivable in evidence.

10. Subject to any rules made under this Act, a caveat may at any time be registered with respect to any lands within any of the three ridings by any person claiming to be entitled to any interest in such lands in favour of any body or person named therein, and, unless removed or cancelled in accordance with any rules to be made for that purpose, shall be in force for such period not exceeding six months as may be named therein in that behalf.

Every such caveat shall be under the hand and seal of the person by whom it is given, and attested by one witness at the least, and shall contain—

(A.) The date on which it is given:

(B.) The name and description of the residence and occupation of the person by whom it is given:

(C.) The name and description of the residence and occupation of the person in whose favour it is given:

(D.) The period for which it is given:

(E.) A description of the lands to be affected by such caveat and the names of all the parishes wherein the same are situate.

If within the period for which any caveat remains in force any assurance made or executed by the person by whom such caveat was given, and conveying any interest in the lands described therein to the person in whose favour such caveat was given, or to his heirs, executors, administrators, or assigns, be duly registered under this Act, such assurance shall have priority as though it had been enrolled upon the date on which such caveat was enrolled, and such last-mentioned date shall, subject to the proviso herein-after contained, be deemed to be the date of registration of the said assurance for all purposes, and shall be substituted in all certificates and other instruments for the date on which such assurance was actually enrolled accordingly: Provided that no such caveat shall have any effect as against the operation of any law for the time being in force relating to bankruptcy, and that for the purpose of any such law the date of registration of any such assurance or

will shall be deemed to be the date upon which such assurance or will was actually registered.

11. Where any person claiming an interest under any will in any lands within any of the three ridings is desirous of registering the same, but is unable to do so within a period of six months after the death of the testator, such person may within the said period of six months register a notice of such will. Every such notice shall be under the hand and seal of the person by whom it is given, and shall be attested by one witness in the least, and shall contain—

(A.) the date of the will:

(B.) The date of the death of the testator:

(C.) The name and description of the residence and occupation of the testator so far as set out in the will:

(D.) The name and description of the residence and occupation of the person by whom such notice is given:

(E.) A description of all the lands affected by the will within the riding, and the names of all the parishes wherein the same are situate, so far and in such manner as the same are expressed or mentioned in the will, or to the same effect.

Where any such notice has been duly registered within the said period of six months, then if within two years after the death of the testator the will, which is the subject of such notice, is duly registered under this Act, such will shall have priority as though it had been registered upon the date on which such notice was registered, and such last-mentioned date shall be deemed to be the date of registration of the said will for all purposes, and shall be substituted in all certificates and other instruments for the date on which such will was actually registered.

12. Any person who claims as heir or otherwise any estate or interest in any lands within any of the three ridings which might have been defeated or affected by the will of any person dying after the commencement of this Act, and believes that such person died intestate, or intestate as to such lands, may at any time after, but not before, the expiration of six months from the death of such person, register an affidavit of intestacy.

Every such affidavit shall state—

(A.) The date of the death of the deceased:

(B.) The name and description of the residence and occupation of the deceased:

(C.) The name and description of the residence and occupation of the deponent:

(D.) A description of all the lands within the riding in which the deponent claims such estate or interest, and the names of all the parishes wherein the same are situate:

(E.) The nature of the estate or interest claimed by the deponent:

(F.) The fact that the deponent believes that the deceased died intestate, or intestate as to such lands.

Where any such affidavit of intestacy has been duly registered, any assurance for valuable consideration made or executed by any person who would be empowered to make or execute the same in case of such intestacy, and duly registered, shall have priority over any will of the supposed intestate, the date of registration of which shall be subsequent to the date of registration of such assurance or will and not within or under this Act to be deemed to be within a period of six months after the death of the supposed intestate.

13. Where the provisions of any Act of Parliament passed or to be passed have the effect of vesting any lands within any of the three ridings in any person by or upon the payment of money or by or upon any other act (other than any assurance or act the registration whereof is herein otherwise provided for), and such lands become so vested by or upon any such payment or other act made or done after the commencement of this Act, any person claiming under or by virtue of such vesting as aforesaid may register an affidavit of such vesting.

Every such affidavit shall contain—

(A.) A recital of the date and title of the Act of Parliament under which such vesting has been effected:

(B.) A recital of so much of the Act itself as affects the lands so vested:

(C.) The name and description of the residence and occupation of the deponent:

(D.) A statement of the fact that such payment or act as aforesaid has actually been made or done with the date thereof:

(E.) A description of the lands within the riding which have become vested under the said Act in consequence thereof, and the names of all the parishes wherein the same are situate.

14. Subject to the provisions of this Act, all assurances entitled to be registered under this Act shall have priority according to the date of registration thereof, and not according to the date of such assurances, or of the execution thereof, and every will registered under this Act shall have priority according to the date of the death of the testator if the date of registration thereof be within, or under this Act to be deemed to be within, a period of six months after the death of the testator, or

according to the date of registration thereof, if such date of registration be not within, or under this Act to be deemed to be within, such period of six months: Provided that nothing in this Act shall interfere with the priorities as between themselves of any assurances or wills the dates of registration of which may be identical.

All priorities given by this Act shall have full effect in all courts, except in cases of actual fraud, and all persons claiming thereunder any legal or equitable interests shall be entitled to corresponding priorities, and no such person shall lose any such priority merely in consequence of his having been affected with actual or constructive notice, except in cases of actual fraud; but nothing in this section contained shall operate to confer upon any person claiming without valuable consideration under any person any further priority or protection than would belong to the person under whom he claims; and any disposition of land or charge on land, which if unregistered would be fraudulent and void, shall, notwithstanding registration, be fraudulent and void in like manner.

15. The registration of any instrument under this Act shall be deemed to constitute actual notice of such instrument, and of the fact of such registration to all persons and for all purposes whatsoever, as from the date of registration.

16. In any case in which priority or protection might but for this Act have been given or allowed to any estate or interest in lands by reason or on the ground of such estate or interest being protected by or tacked to any legal or other estate or interest in such lands, no such priority or protection shall after the commencement of this Act be so given or allowed to any estate or interest in lands within the three ridings, except as against any estate or interest which shall have existed prior to such commencement, and full effect shall be given in every court to this present provision, although the party claiming such priority or protection as aforesaid shall claim as a purchaser for valuable consideration and without notice.

17. Any person claiming under any assurance or will duly registered shall have and be entitled to all the same grounds of relief as against any person claiming through any assurance or will of a subsequent date to that under which he claims, but which has acquired priority by earlier registration as the person through whom he claims under such first-mentioned assurance or will might have had and been entitled to.

18. Subject to the provisions of this Act, and any rules made thereunder, the registrar shall register all assurances, wills, and other instruments that may be entitled to be registered under this Act which, or memorials of which, may be presented to him for enrolment in the register in the order in which they are so presented, and shall make such entries as are required to be made under this Act or any rules made thereunder for the purposes of such registration.

Provided that all instruments or memorials which may be delivered through the post or otherwise at the office for the purpose of enrolment at any time when the office is closed, shall be deemed to be presented for enrolment simultaneously at the time when the office next opens for the business of registration, and that subject as aforesaid all instruments or memorials sent through the post shall be deemed to be presented for enrolment at the time when they are actually delivered at the office in course of post.

19. Subject to the provisions of this Act, and to any rules made thereunder, any person may, on application at the register office, at such times as may be limited by the registrar in that behalf inspect and search the register and any other books and indexes which may be required to be kept at the register office under this Act, or any rules made thereunder, and may take copies thereof or extracts therefrom.

20. Subject to the provisions of this Act, and to any rules made thereunder, any person may at any time require an official search to be made on his behalf at the register office, subject to the following regulations:

(A.) He shall deliver in the register office a requisition in writing signed by himself requiring such search to be made:

(B.) The requisitions shall contain such full particulars of the character of the search required to be made and otherwise in relation thereto as may be required by the registrar:

(C.) Upon receipt of any such requisition, the registrar shall cause a diligent search to be made, and shall give a certificate of the result of such search to the person requiring the same to be made, and shall sign such certificate and seal the same with the seal of the registry, and every certificate so signed and sealed shall be receivable in evidence.

21. Where any official search has been made under this Act, a record of the result of such

search shall be preserved at the register office, and the registrar shall give a certificate of such result to any person requiring the same, and shall sign such certificate and seal the same with the seal of the registry, and every certificate so signed and sealed shall be receivable in evidence.

22. Subject to the provisions of this Act, and to any rules made thereunder, any person may require a certified copy of or extract from any document enrolled in the register or of or from any entry in the register, or any book or index kept at the register office under this Act, or any rules made thereunder, and thereupon a certified copy or extract signed by the registrar and sealed with the seal of the register office shall be given to such person, and every such copy or extract so signed and sealed shall be receivable as evidence of the contents of such document or entry in every case where such contents may under the rules of evidence be proved by means of any copy or extract; but nothing in this section contained shall be taken to dispense with the production of any original document in any case in which the production thereof might otherwise be required, nor to dispense with any proof which might otherwise be required as to the due making and execution thereof.

23. Where any solicitor, trustee, executor, agent, or other person in a fiduciary position, either by himself or by a solicitor, obtains a certificate of the result of an official search, or a certified copy of any document enrolled in the register, or of any entry in the register or any book or index kept at the register office under this Act or any rules made thereunder, such solicitor, trustee, executor, agent, or other person shall not be answerable for any loss, damage, or injury that may arise from any error in such certificate or copy; and

Where in any case it is the duty of any solicitor, trustee, executor, agent, or other person in a fiduciary position, either by himself or by a solicitor, to compare any abstract of any deed or will with any original deed or will which has been enrolled at full length in the register, the comparison of such abstract with the copy so enrolled shall be deemed a sufficient discharge of such duty by such solicitor, trustee, executor, agent, or other person, and he or they shall not be answerable for any loss that may arise from any error in the copy so enrolled.

24. Subject to any rules made under this Act, every leaf of the register shall be numbered, and shall be signed by two members of the county authority to be nominated by the county authority for that purpose, and once at least in every year an entry shall be made in the records of the county authority of the number of volumes of the register, and the number of volumes of the various other books and indexes in use in the register office, and the number of pages contained therein respectively which then are or have been in use in the said office.

25. Any person claiming any estate or interest in any lands within the limits of this Act may at any time apply to the Chancery Division of the High Court of Justice for an order that the register or any book or index kept at any of the register offices under this Act, or any rules made thereunder, shall be rectified, or that any entry may be made or interpolated in any such register book or index, or that any entry in such register book or index may be cancelled, or that any certificate endorsed or given under this Act may be amended or cancelled, or that any deed, will, certificate, or other document may be produced to the registrar for the purpose of any registration, enrolment, entry, or cancellation, or that the priority by this Act granted to assurances, wills, or other instruments upon the registration thereof may be suspended in whole or in part during the continuance of any proceedings then pending in any court as to any assurances or wills registered after the date of such order, and the court may either refuse such application, or if satisfied of the justice of the case may make such order in reference thereto, and as to the costs thereof, as may in their opinion be just and expedient.

The registrar and every other person or body affected by any such order of a court shall obey the same on being served with such order or an official copy thereof, and upon such service on the registrar such order shall be deemed to have been presented to him for enrolment in the register and shall be registered accordingly.

Any jurisdiction of the Chancery Division of the High Court of Justice under this section may be exercised by any judge of the said court, whether sitting in open court or in chambers.

The Lord Chancellor may, from time to time, assign the duties vested in the said court in relation to matters under this section to any particular judge or judges of that court, and may from time to time make, revoke, and alter rules for carrying into effect the objects of this section: Provided always, that the said rules so made, revoked, or altered, shall not extend the jurisdiction of the court.

Any person aggrieved by an order made

under this section by the said court may appeal within the prescribed time in the same manner and with the same incidents in and with which orders made by the said court in cases within the ordinary jurisdiction of such court may be appealed from.

26. Nothing in any Act contained whereby the registrar is directed to give any certificate upon the production to him of any statutory receipt, shall render it obligatory on the registrar to give any such certificate unless and until such statutory receipt has been duly registered under this Act.

27. Nothing in this Act contained shall render it obligatory on the registrar to enrol, register, or enter any instrument chargeable with any stamp duty which is not duly stamped.

28. Nothing in this Act contained shall be deemed to extend to any copyhold hereditaments, nor to any lease not exceeding twenty-one years, or any assignment thereof where accompanied by actual possession from the making of such lease or assignment.

29. Nothing in this Act contained shall be deemed to extend to any assurance or will, so far as the same may relate only to shares in any public or private works or undertaking of any corporation, company, or society which by virtue of any Local or other Act of Parliament may be required to be registered or otherwise entered or minuted in the books of the corporation, company, or society.

30. Nothing in this Act contained shall be deemed to extend to any assurances of any lands being parcel of the land revenues of the Crown, or assurances of lands to or in trust for Her Majesty, or other assurances which may be enrolled in "The Office of Land Revenue, Record, and Inrolments."

Register Offices.

31. There shall be offices for the registration of deeds—

At Northallerton for the north riding;
At Beverley for the east riding; and
At Wakefield for the west riding;

which shall be maintained by the county authorities within the three ridings respectively, and the business of each such registry shall be conducted by a registrar, together with such number of clerks, messengers, and servants as may from time to time be appointed in that behalf, and at each of such offices the registrar shall keep a register for the registration of assurance wills and other instruments required or permitted to be registered under this Act.

32. There shall be a seal for each register office, and judicial notice shall be taken of the seal and of the signature of the registrar in all legal proceedings.

33. From and after the commencement of this Act all the land and property vested in or held by any county authority, or by any person upon trust for the purposes of any existing registry, together with all the estate and interest of any registrar, or heirs, executors, administrators, or devisees of any late registrar of any existing registry in any land used for the purpose of such registry, or any fixtures, furniture, or effects belonging thereto, shall be vested in the clerk of the peace for the riding within which such registry is situate, and his successors, subject to the liabilities affecting the same, upon trust for the purposes of the registry established under this Act within the said riding, and be by him and them held for the purposes of such registry, or otherwise be by him and them sold, conveyed, or disposed of in such manner as the county authority may from time to time order and direct.

34. The county authority may from time to time purchase any lands for the purposes of the registry established under this Act, and may upon such lands, and any other lands within the riding which may be vested in them or in any trustee for the purposes of the registry established under this Act, from time to time build, maintain, repair, alter, improve, enlarge, or rebuild such offices and buildings for the purposes of the registry established under this Act as they may think expedient, or may from time to time sell the lands so purchased or vested as aforesaid, or any part thereof, and all expenses incurred by the county authority in carrying into effect the provisions of this Act, together with all expenses of and incidental to the payment of any rates, taxes, assessments, or charges in respect of any such lands, buildings, or offices as aforesaid which may for the time being be vested in the county authority, or in any person or persons in trust for the purposes of the said registry, shall be paid by the county authority.

35. Subject to the provisions of this Act the county authority may from time to time make, and when made may rescind, amend, or add to, rules in respect to all or any of the following matters:

(1.) The form of the register and the mode in which the same is to be made and kept:

(2.) The preparation and keeping at the register office of any books and indexes, and the entries to be made therein for the purpose of effecting any registration:
(3.) The mode in which registration is to be conducted:
(4.) The making of entries in the register where any mortgage, lien, or charge with reference to which any instrument has been registered under this Act has been satisfied or discharged:
(5.) The forms of memorials, certificates, and other instruments to be prepared for the purposes of this Act:
(6.) The making of searches and the giving of certified copies:
(7.) The fees to be taken by the registrar where such fees are not paid to and retained by an existing registrar for his own use:
(8.) The custody of the register and other documents connected with the business of registration:
(9.) The transmission by post of applications for registration and for search, and of registered documents and certificates of registration and search:
(10.) Generally in relation to any matters whether similar or not to those above mentioned, as to which it may be expedient to make rules for carrying into effect the objects of this Act:

Provided that no such rules shall have any force or effect unless and until they have been confirmed by the Lord Chancellor and published in such manner as he may direct, and that a copy thereof shall be laid before both Houses of Parliament within fourteen days after the confirmation thereof if Parliament be then sitting, or if Parliament be not then sitting within fourteen days after the next meeting thereof.

Any rules made, confirmed, and published in pursuance of this Act shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act and shall be judicially noticed.

36. The existing registrars shall be the first registrars for the respective ridings for the purposes of this Act, and shall have and be subject to all the like rights, duties, obligations, and liabilities, and be entitled to the same remuneration in connexion with the registries established under this Act as they would have and be subject to and would be entitled to in connexion with the existing registries if this Act had not passed so far as may be possible, and save as aforesaid nothing in this Act contained shall affect the rights of the existing registrars or of their deputies duly appointed, or shall alter the nature and tenure of their offices or the remuneration attached thereto, or the duties, obligations, and liabilities of such registrars and deputies in connexion with the registries respectively: Provided always, that the county authority for any riding may at any time agree with the existing registrar for such riding that all fees and payments received by or on account of him in connexion with the registry established under this Act shall be paid over to the county authority and applied in manner directed by this Act, and that a salary of an agreed amount should be paid to such existing registrar in lieu thereof, and thereupon the said fees shall be paid over to the county authority and applied by them in manner directed by this Act, and a salary of the agreed amount shall be paid by the county authority to such existing registrar in accordance with the terms of the said agreement: Provided also, that the county authority for any riding may at any time agree with the existing registrar for such riding that such registrar shall surrender his office of registrar as from some date to be agreed upon, and that in consideration thereof there shall be paid to such registrar a retiring allowance either in the form of an annuity (of a fixed amount or of an amount varying according to the fees and payments from time to time received in connexion with the registry) to be paid during the life of such registrar or of a capital sum, and thereupon such registrar may surrender his said office, and such retiring allowance shall be paid by the county authority to such registrar in accordance with the terms of the said agreement.

37. When and so soon as the office of any existing registrar becomes vacant, the following provisions shall come into force and have effect:
(1.) The county authority from time to time shall appoint some fit person being a barrister or solicitor of not less than seven years standing and in actual practice at the time of such appointment, or a person who shall for a period of at least five years have discharged the duties of deputy registrar under any of the existing Registry Acts or partly under the existing Registry Acts and partly under this Act to be registrar who shall personally attend to the duties of his office, and may, if they think it expedient, remove any person so appointed from such office: Provided that no such appointment shall have any force or effect unless and until it has been confirmed by the Lord Chancellor, and that the Lord Chancellor may at any time cancel any appointment so made and remove any person appointed from

such office upon being satisfied that such person does not properly discharge the duties thereof.

No registrar appointed under this section shall either by himself or in partnership with any other person follow any other calling or profession during the time he holds such appointment.

(2.) The county authority may from time to time by order direct that any person or persons to be nominated in such order shall be capable of discharging the duties of registrar during any temporary vacancy in the office or during the temporary absence of any registrar through illness or otherwise, upon such terms as to remuneration or otherwise as may be directed by such order; and in default of any such nomination the clerk of the peace or his deputy shall be empowered to act as registrar during such vacancy or temporary absence as aforesaid:

(3.) A registrar may, with the approval of the county authority, at any time, by writing under his hand, appoint some fit person or persons being qualified as is herein-before required for the office of registrar to be his deputy or deputies, and to act for him for such time and under such conditions as to remuneration or otherwise as may be sanctioned by the county authority: Provided that any deputy so appointed may at any time be removed from his office by the registrar or the county authority:

(4.) The registrar, with the approval of the county authority, shall from time to time appoint such number of clerks, messengers, and servants as may be deemed expedient for carrying this Act into effect, and may from time to time dismiss any person so appointed:

(5.) Every registrar and deputy registrar, and, if the county authority think proper, all or any of the clerks to be appointed under this section, shall give security for the due performance of the duties of their respective offices in such manner and to such amount as the county authority may determine:

(6.) The registrar, deputy registrars, clerks, messengers, and servants appointed under this section shall be paid such salaries or remuneration as the county authority may from time to time determine:

(7.) All salaries and remuneration payable under this section, together with all other expenses of and incidental to the register offices, shall be paid by the county authority.

38. The fees to be taken in each register office in respect of documents to be registered, entries, searches, certificates, and copies to be made, and other matters to be done in such office under this Act, shall be such fees as are specified in that behalf in the Second Schedule to this Act, or such other fees as are fixed in manner herein-after mentioned, and such fees so specified or fixed may be taken and shall be paid accordingly, and nothing in this Act contained shall make it obligatory on the registrar to do any act or permit any act to be done in respect of which any fee is so specified and fixed, except on payment of such fee.

At any time and from time to time after any registrar has been appointed by the county authority, or after any agreement between any existing registrar and the county authority for the payment of such registrar by salary and not by fees has come into effect, the county authority may by any rules made under this Act vary or wholly abolish any fees specified in the Second Schedule hereto, and may fix new fees in addition thereto or in lieu thereof.

39. After the commencement of this Act no registrar or other person employed at any registry shall take or receive any fee or gratuity in respect of the business carried on thereat, except such as may be authorised to be taken under the provisions of this Act.

40. Subject to the rights of any existing registrars and their deputies to be paid and to retain for their own use any fees and other payments made to them under this Act, the county authority may from time to time direct that the fees or other payments which may be received under the authority of this Act, or any part thereof, shall be applied under such regulations as they may appoint in payment of the current or incidental expenses of the registry, or any of them, but, save so far as the same or any part thereof may be so applied, all such fees and payments as aforesaid shall be paid over to the county authority in such manner and subject to such regulations as they may direct, and shall be carried by them to the credit of the county rate.

41. Accounts shall be kept at each registry of all fees and payments received under the authority of this Act, and of all current and incidental expenses paid thereout, and such accounts shall be audited in such manner, at such times, and by such person or persons as may be directed by the county authority. Any person auditing any accounts in pursuance of this section shall be entitled to receive such remuneration (if any) as may be fixed by

the county authority, and such remuneration shall be paid by the county authority.

42. All expenses incurred by a county authority under this Act and not otherwise provided for, including the expenses of and incidental to the obtaining of this Act, may be defrayed out of the county rate, and the county authority may from time to time cause such county rates to be levied as may be necessary for the purpose of defraying such expenses: Provided that such expenses shall be deemed to be sums expended out of the county rate for general county purposes within the meaning of the Municipal Corporations Act, 1882.

Existing Registries.

43. Where in any case any assurance or instrument executed or made before the passing of this Act, or the will of any testator dying before the commencement of this Act, or any judgment, statute, or recognizance given, acknowledged, or made before the commencement of this Act, or any memorial thereof respectively, might but for the passing of this Act have been registered in any existing registry, but such assurance, instrument, will, judgment, statute, recognizance, or memorial have not been so registered, such assurance, instrument, will, judgment, statute, or recognizance may be registered in the manner and subject to the regulations contained in this Act, and every such registration shall be deemed to be a registering of such assurance, instrument, will, judgment, statute, or recognizance, or of a memorial thereof, under such of the Acts by this Act repealed as apply to the existing registry in which the same might have been so registered as aforesaid, and shall have effect accordingly, but such registration shall not be deemed to be or have effect as a registration of an assurance, instrument, or will under this Act.

44. All registers, books, indexes, and other documents and instruments in or belonging to the existing registries, or in the custody or under the control of the existing registrars, or of any other person attached thereto or employed therein for the purposes thereof, shall from and after the commencement of this Act be vested in the clerks of the peace for the ridings within which such registries are situate respectively, upon trust for the purposes of the registry established under this Act within the said riding, and be by him and them held for the purposes of such registry, and disposed of in such manner as the county authority may direct.

The county authority shall from time to time make such provisions and give such directions as they may deem expedient for the purpose of securing the deposit and safe custody of the said registers, books, indexes, and other documents and instruments in the new registry offices, and for the providing for the making of searches therein, and of copies thereof, and for all other matters relating thereto, and the like fees shall be taken and paid in respect of such searches and copies as in the case of other copies and searches to be made in the said offices under this Act.

45. All copies to be made after the commencement of this Act of enrolments of bargains and sales enrolled in the existing registries, and of the entries or enrolments of deeds, wills, writings, or conveyances registered at full length in the existing registry for the north riding shall be signed by the registrar and sealed with the seal of the office, and copies so signed and sealed shall be as good evidence as copies of such enrolments and entries would have been under and by virtue of any of the Registry Acts if signed and attested in manner by the said Acts respectively required.

Miscellaneous.

46. If any registrar or other person employed in the register office is party or privy to any act of fraud or collusion in relation to the registration of any assurance, will, or other instrument under this Act, or the making of any enrolment or entry, or the giving of any certificate or copy, or the making of any search, or the taking of any extract or copy under this Act, or any rules made thereunder, he shall be guilty of a misdemeanor, and shall upon conviction on indictment be liable to imprisonment with or without hard labour for any period not exceeding two years.

47. If any person making any affidavit under this Act shall therein wilfully swear falsely, such person shall be deemed guilty of wilful and corrupt perjury.

48. Any affidavit to be registered under this Act may be sworn before any person authorised to administer oaths in Her Majesty's High Court of Justice or in the Court of Chancery of the county palatine of Lancaster, or in the case of a person who is out of the kingdom of Great Britain and Ireland before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace or

qualified as aforesaid by a British Minister or British Consul or by a notary public).

49. When and so soon as the right of appointment of the registrar under this Act is vested in and has been exercised by the county authority, the following provisions shall have effect:

(A.) Every action which may be brought by any person to recover damages for or by reason of any loss or damage occasioned by any neglect, omission, mistake, or misfeasance of the registrar or any person employed in the register office in connexion with the business of such office shall be brought against the registrar as the nominal defendant by his name of office, and no such action shall abate by reason of the death or removal from office of any such registrar:

(B.) A writ or process shall not be sued out against or served on the registrar for anything done or intended to be done or omitted to be done under the provisions of this Act until the expiration of one month after notice in writing has been served on such registrar, clearly stating the cause of action and the name and place of abode of the intended plaintiff and of his solicitor or agent in the cause:

(C.) The registrar, with the consent of the county authority, may enter into and conclude a compromise with any body or person claiming a right of action against him under this section, or may agree with such body or person that any question relating to such right of action should be referred to arbitration:

(D.) All damages, costs, and expenses payable by the registrar in respect of any such action, compromise, or arbitration as in this section above mentioned shall be paid by him out of moneys to be provided by the county authority, and the county authority shall provide all moneys which may be necessary in that behalf.

50. No matter or thing done and no contract entered into by any county authority, and no matter or thing done by any member of any such authority, or by any officer of such authority or other person whomsoever appointed by and acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into bonâ fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever, and any expense incurred by any such county authority, member, officer, or other person acting as last aforesaid shall be paid by the county authority:

Provided that nothing in this section shall exempt any member of any county authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.

51. From and after the commencement of this Act the Acts specified in the First Schedule to this Act shall be and the same are hereby repealed.

Provided that this repeal shall not affect—

Anything duly done or suffered; or

Any right, privilege, priority, or preference acquired; or

Any liability, disqualification, disability, fine, forfeiture, or other punishment incurred

under any enactment so repealed prior to the commencement of this Act, and any proceeding and remedy for the ascertainment, enforcement, or recovery thereof may be instituted, prosecuted, and had as though this Act had not passed.

The SCHEDULES referred to in the foregoing Act.

THE FIRST SCHEDULE.

Sections 3, 51.

Session and Chapter.		Title.
2 & 3 Anne, c. 4.	1	An Act for the publick registring of all deeds, conveyances, and wills that shall be made of any honors, manors, lands, tenements, or hereditaments within the west riding of the county of York after the nine-and-twentieth day of September one thousand seven hundred and four.
6 Anne, c. 20. -	2	An Act for inrollments of bargains and sales within the west riding of the county of York in the register office there lately provided, and for making the said register more effectual.

5 Anne, c. 18. in Ruffhead.

	Session and Chapter.		Title.
c. 55. in Ruffhead.	6 Anne, c. 62. -	3	An Act for the publick registring of all deeds, conveyances, wills, and other incumbrances that shall be made of or that may affect any honors, manors, lands, tenements, or hereditaments within the east riding of the county of York or the town and county of the town of Kingston-upon-Hull after the nine-and-twentieth day of September one thousand seven hundred and eight, and for the rendring the register in the west riding more complete.
	8 Geo. II. c. 6. -	4	An Act for the publick registring of all deeds, conveyances, wills, and other incumbrances that shall be made of or that may affect any honors, manors, lands, tenements, or hereditaments within the north riding of the county of York after the nine-and-twentieth day of September one thousand seven hundred and thirty-six.

Section 38.

THE SECOND SCHEDULE.

For entering or registering a memorial, certificate, deed, or other document, where the same does not exceed two folios (of 100 words each) in length -	One shilling.
The like, where the said memorial, certificate, deed, or other document exceeds two folios (of 100 words each) in length - - - - -	Sixpence per folio.
For every certificate or copy of any memorial, deed, or other document given or filed pursuant to this Act - - - - - -	The like fees.
For every search (not being an official search) - - - -	One shilling.
For every official search—	
For each period of five years - - - - - -	Sixpence.

CHAP. 55.

Pensions and Yeomanry Pay Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Royal order as to soldiers pensions and to pay and pensions of the Yeomanry.*
3. *Punishment for obtaining pay or pensions by fraudulent means.*
4. *Distribution of money not exceeding one hundred pounds without requiring probate.*
5. *Exemption from stamp duty.*
6. *Recovery of certain penalties and sums of money under 44 Geo. 3. c. 54.*
7. *Definitions.*
8. *Repeal.*
9. *Commencement of Act.*
SCHEDULE.

An Act to make further provision with regard to the Pensions of Soldiers, and to the Pay and Pensions of the Yeomanry, and for other purposes.

(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Pensions and Yeomanry Pay Act, 1884.

2.—(1.) On and after the commencement of this Act it shall be lawful for Her Majesty from time to time to make, and when made to revoke and vary, orders relating to pensions of soldiers, and to the pay and pensions of the yeomanry, including the commutation of pensions, the restoration of forfeited pensions, and the award and payment of both such pay and pensions as aforesaid.

(2.) Every order so made shall forthwith after it is made be laid before both Houses of Parliament, and shall notwithstanding anything in any other Act have effect as if enacted in this Act; and if any question of doubt arises as to the construction of any Act or royal order relating to such pensions recourse shall be had to the advice of a Secretary of State, whose decision thereon shall be binding.

(3.) A Secretary of State may from time to time make such regulations as appear to him to be required for the purpose of carrying into effect any order made in pursuance of this section.

(4.) Nothing in any order made in pursuance of this section shall take away or diminish, without his consent, any right of a soldier to receive such pension as was fixed by any order applying to such soldier and in force at the time of his enlistment and for the payment whereof money shall have been voted by Parliament.

3.—(1.) If any person by means of any false certificate, false representation, false document, false statement, or other fraudulent means, obtains, or attempts to obtain, for himself or any other person, the grant, increase, or payment of any pay or pension payable, or any privilege or advantage obtainable in pursuance of any warrant, order, or regulation of Her Majesty or a Secretary of State, whether made in pursuance of this Act or otherwise, he shall, on conviction on indictment, be liable to imprisonment, with or without hard labour, for a term not exceeding two years, and on conviction by a court of summary jurisdiction be liable to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(2.) Section one hundred and forty-two of the Army Act, 1881, shall apply in like manner as if any order or regulation made in pursuance of this Act were regulations within the meaning of that section.

(3.) Any offence under this section, when prosecuted before a court of summary jurisdiction, may be prosecuted, and the fine recoverable on conviction by a court of summary jurisdiction may be recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to this Act, and for all purposes in relation to the arrest, trial, and punishment of a person for any offence under this section, this Act shall apply to the Channel Islands and the Isle of Man, and the Royal Courts of the Channel Islands shall register the same.

4.—(1.) Where a person who is serving or has served as an officer, soldier, or otherwise, in or with any of Her Majesty's military forces, or who has received remuneration out of money provided by Parliament for army services, or who is the widow or relative of any such person, dies, and any part of the personal estate of such deceased person not exceeding in value one hundred pounds (whether arising from pay, pension, allowances, surplus property, prize money, or otherwise howsoever), is held by or under the control of a Secretary of State, then if any general or special regulations of a Secretary of State so provide, and subject to such regulations, probate, or other proof of the title of the personal representative of such deceased person may be dispensed with, and such personal estate may be paid, delivered, or distributed to or among the persons appearing in manner provided by the said regulations to be beneficially entitled to the personal estate of such deceased person, or to or among any one or more of such persons, or, in case of any illegitimacy of the deceased person or his children, to or among such person or persons as may be directed by the said regulations, and the Secretary of State and person making such payment, delivery, or distribution, shall be discharged from all liability in respect of the personal estate paid, delivered, or distributed in accordance with the said regulations.

5. Every order, receipt, affidavit, and document used in pursuance of any warrant, order, or regulation of Her Majesty or a Secretary of State, whether made in pursuance of this Act or otherwise, in relation to the payment of any pension in respect of military service, including service in any of the auxiliary forces, shall, unless otherwise provided by such warrant, order, or regulation, or by the regulations, general or special, of a Secretary of State, be exempt from stamp duty.

6. Whereas doubts have arisen with respect to the recovery and application of certain sums, penalties, and forfeitures under the Yeomanry Act, 1804, and it is expedient to remove such doubts: Be it therefore enacted as follows:

(1.) Any order for determining any appeal or for directing the payment of any money in pursuance of section forty-six or of section fifty-one of the Yeomanry Act, 1804, or for any other purpose mentioned in either of those sections may be made by a court of summary jurisdiction, and enforced in accordance with the Summary Jurisdiction Acts.

(2.) A person guilty of an offence mentioned in section forty-four, forty-five, or fifty-two, of the Yeomanry Act, 1804, shall, on summary conviction for such offence, be liable to a penalty not exceeding the penalty and forfeiture mentioned in those sections.

(3.) All sums adjudged to be paid by any order or conviction mentioned in this section, if adjudged on the prosecution of the commanding officer of a corps of yeomanry, shall be paid to the commanding officer, and by him carried to the contingent and clothing account of the corps, or to such other account on behalf of the corps as a Secretary of State from time to time directs.

(4.) For the purpose of this section the expression "Summary Jurisdiction Acts" means, as regards England, the Summary Jurisdiction (English) Acts; and as regards Scotland, means the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and the expression "court of summary jurisdiction" has the same meaning as "the court of summary jurisdiction" and "the court" in those Acts.

(5.) The Act of the session of the forty-fourth year of the reign of King George the Fourth, intituled "An Act for consolidating and amending the provisions of the several Acts relating to corps of yeomanry or volunteers in Great Britain and to make further regulations relating thereto," is in this Act referred to and may be cited as the Yeomanry Act, 1804.

7. In this Act—
The expression "Secretary of State" means one of Her Majesty's principal Secretaries of State; and
The expression "pension" includes any allowance in the nature of a pension; and
The expression "soldier" includes a discharged soldier.

8.—(1.) The Acts mentioned in the Schedule to this Act (which Acts relate to the yeomanry and to the payment of pensions under the direction of a Secretary of State) shall be repealed, on and after the commencement of this Act, to the extent mentioned in the third column of the said Schedule.

Provided that the repeal enacted by this Act shall not affect anything done or suffered, or any rights or liabilities acquired or accrued, before the commencement of this Act or of any such order, nor revive any power or right not existing at the commencement of this Act.

9. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-five, which day is in this Act referred to as the commencement of this Act: Provided that any orders may before the said date be made in pursuance of this Act, and shall come into effect upon the said commencement.

SCHEDULE.

NOTE.—A description or citation of a portion of an Act in this Schedule is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
44 Geo. 3. c. 54.	An Act to consolidate and amend the provisions of the several Acts relating to corps of Yeomanry and Volunteers in Great Britain and to make further regulations relating thereto.	So much of section thirty-three as relates to the application of any sums of money. Section thirty-six. Section thirty-seven, from "be entitled to and" to "Corps, and" Section thirty-eight. Section thirty-nine, from "and the sum" to the end of that section. Section forty. Section forty-four from "and if such man shall not" to the end of the section. Section forty-five from "and if such offender shall not" to the end of the section. Sections forty-eight and forty-nine. Section fifty-one, from "as a penalty or forfeiture" to the end of the section. Section fifty-two, from "to be levied by distress and sale" to the end of the section.
53 Geo. 3. c. 51.	An Act to relieve the widows of military officers from the payment of stamp duties on the receipt of their pensions in Ireland.	The whole Act.
7 Geo. 4. c. 58.	An Act to amend the laws relating to Corps of Yeomanry Cavalry and Volunteers in Great Britain.	Section four.

Session and Chapter.	Title.	Extent of Repeal.
19 & 20 Vict. c. 15. -	An Act for further regulating the payment of the out-pensioners of Greenwich and Chelsea Hospitals.	The whole Act so far as it relates to Chelsea out-pensioners.
31 & 32 Vict. c. 90. -	An Act to empower certain public Departments to pay otherwise than to executors or administrators small sums due on account of pension or allowances to persons deceased.	Section two.

CHAP. 56.

Chartered Companies Act, 1884.

ABSTRACT OF THE ENACTMENT.

1. *Power of Her Majesty to renew terms of charters.*

An Act to declare the Law relating to the Incorporation of Chartered Companies. (14th August 1884.)

WHEREAS by an Act of the first year of the reign of Her present Majesty, chapter seventy-three, entitled "An Act for better enabling "Her Majesty to confer certain powers and "immunities on trading and other com-"panies," it was enacted that it should be lawful for Her Majesty, her heirs and successors, in any charter of incorporation to be thereafter granted to limit the duration thereof for any term or number of years, or for any other period whatsoever:

And whereas provision has in many charters of incorporation been made for the cessation of the privileges conferred by such charters after a limited time:

And whereas with a view of preventing the cessation of such privileges, supplemental charters and warrants and documents under the sign manual of Her Majesty have from time to time been granted, continuing for a further limited time the privileges granted by the said charters, or some of such privileges, and it is expedient to remove doubts with respect to such charters, warrants, and other documents:

Be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The enactment contained in the twenty-ninth section of the said Act of the first year of Her Majesty, chapter seventy-three, shall be construed as from the date thereof to have authorised and to authorise Her Majesty, by charter or by warrant or other writing under her sign-manual from time to time, and whensoever to Her Majesty may have seemed or seem expedient, to extend or renew conditionally or unconditionally any term or number of years or other period for which any charter of incorporation granted by Her Majesty, or any privileges of such charter may for the time being be limited to endure.

CHAP. 57.

Superannuation Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power to Treasury to make order relieving person for want of certificate under* 22 *Vict. c.* 26.
3. *Provision for addition of years to service in certain cases.*

An Act to extend certain Powers given by the Superannuation Act Amendment Act, 1873. (14th August 1884.)

WHEREAS by the Superannuation Act, 1859, it is enacted that for the purposes of that Act no person thereafter to be appointed shall be deemed to have served in the Permanent Civil Service of the State unless such person holds his appointment directly from the Crown, or has been admitted into the Civil Service with a certificate from the Civil Service Commissioners:

And whereas it appears that in several public departments of the State persons have been appointed since the passing of the said Act to established situations in the Civil Service not held directly from the Crown, but that through inadvertence on the part of the heads of such departments, and without any default on the part of the persons so appointed, no steps were taken before their appointment to procure for them certificates from the Civil Service Commissioners:

And whereas with a view of relieving such persons from loss of the superannuation allowance or gratuities which they were led to expect when they entered the Civil Service, provision was made by the Superannuation Act Amendment Act, 1873, enabling the Commissioners of Her Majesty's Treasury, on applications by the heads of such departments, by order or warrant, to place such persons in the same position as regards their claim to a superannuation allowance or gratuity as they would have been in if they had been admitted into the Civil Service with a certificate from the Civil Service Commissioners:

And whereas a further provision to the like effect was made by the Superannuation (Post Office and War Office) Act, 1876, and the Superannuation Act, 1881:

And whereas the orders or warrants under the said Acts were required to be made before the terms therein mentioned which have now passed:

And whereas notwithstanding that most of the said persons have been relieved by orders or warrants made under the said Acts, some of them still remain for whom, owing to the failure of the heads of departments to make application within the time limited by the said Acts, or owing to other causes beyond their own control, relief has not been provided:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same as follows:—

1. This Act may be cited as the Superannuation Act, 1884.

2. (1.) The Commissioners of Her Majesty's Treasury may, if they think fit, at any time on application being made to them by the head of any public department of the State, declare by order or warrant that a person who has been appointed after the date of the Superannuation Act, 1859, and before the passing of this Act, to a situation in such department entitling persons appointed thereto with a certificate from the Civil Service Commissioners to superannuation allowance was appointed thereto without such a certificate through inadvertence on the part of the head of such department, and without any default on the part of the person so appointed, and every person with respect to whom such order or warrant is issued shall be in the same position as regards his claim to allowances under the Superannuation Act, 1859, as he would have been in if he had been appointed with a certificate from the Civil Service Commissioners.

(2.) Every order or warrant made in pursuance of this Act shall be laid before Parliament in manner provided by the thirteenth section of the said Superannuation Act, 1859.

3. Where the regulations respecting an office which entitles or would, if he had continued to hold it, have entitled the holder to receive an allowance under the Superannuation Act, 1859, provide that a person appointed to such office must have held a professional or other peculiar qualification for the number of years specified in the regulations, the Commissioners of Her Majesty's Treasury may, if they think fit, in computing the amount of superannuation allowance to be granted under the Superannuation Act, 1859 to a person who holds or has at any time held such office, add the number of years so specified to the number of years that such person has actually served, provided that the minute adding that number of years shall be laid before Parliament.

CHAP. 58.

Prosecution of Offences Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title of Act.*
2. *Solicitor of the Treasury to be Director of Public Prosecutions.*
3. *Returns as to crimes by chief officer of police.*
4. *Definitions of "police district" and "chief officer of police."*
5. *Repeal of part of principal Act.*

An Act for amending the Prosecution of Offences Act, 1879.

(14th August 1884.)

WHEREAS it is expedient to amend the Prosecution of Offences Act, 1879 (in this Act referred to as the principal Act):

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Prosecution of Offences Act, 1884, and this Act and the principal Act may be together cited as the Prosecution of Offences Acts, 1879 and 1884.

2. On and after the passing of this Act, all appointments made in pursuance of the principal Act are revoked, and the person for the time holding the office of Solicitor for the affairs of Her Majesty's Treasury shall be Director of Public Prosecutions, and perform the duties and have the powers of such Director.

Section three of the Treasury Solicitor Act, 1876, shall extend to authorise any assistant solicitor for the affairs of Her Majesty's Treasury to act on behalf of the said solicitor in his capacity of Director of Public Prosections.

3. The chief officer of every police district in England shall, from time to time, give to the Director of Public Prosecutions information with respect to indictable offences alleged to have been committed within the district of such chief officer, and to the dealing with those offences, and the said information shall contain such particulars and be in such form as may be for the time being required by regulations under the principal Act.

4. The expression "police district" means—
(1.) The city of London and the liberties thereof; and
(2.) The Metropolitan police district; and
(3.) Any county or riding, parts, division, or liberty of a county or borough, town, or place maintaining a separate police force:
The expression "chief officer of police" means—
(1.) In the city of London the commissioner of police of the city; and
(2.) In the metropolitan police district the commissioner or any assistant commissioner of the police of the metropolis or any district superintendent of the metropolitan police force; and
(3.) Elsewhere the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in a police district as defined by this Act.

5. There shall be repealed the first paragraph of section two of the principal Act, beginning with the words "a Secretary of State," and ending with the word "fix," also sections three and four of the principal Act.

CHAP. 59.

Cholera Hospitals (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Sanitary authority may take possession of site.*
2. *Notice to occupier.*
3. *Site not to be within three hundred yards of dwelling-house.*
4. *Compensation to occupier.*
5. *Limit of land to be taken.*

6. *Penalties.*
7. *Duration of powers of local authorities.*
8. *Short title.*
9. *Definition of sanitary district.*
10. *Extent of Act.*

An Act to enable sanitary authorities in Ireland to take possession of land for the erection of temporary Cholera Hospitals. (14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. On receiving a certificate from a medical officer of health of the union that a case of the infectious disease known as spasmodic or Asiatic cholera has occurred within the sanitary district, it shall be lawful for the authorities of that sanitary district, having first obtained the authority in writing of the Local Government Board, and giving such notice as is specified in this Act, to take possession for a temporary hospital of any site, except as herein-after mentioned, within that sanitary district and specified in such authority.

2. It shall be sufficient notice to the owner or the occupier, or other persons affected, if a notice has been posted on the walls of the union workhouse, at such place on which notices are usually placed, and of the church or chapel and police station nearest to the site within the sanitary district, that it is intended to take possession of such site, on a day specified in such notice, not being less than five days from the posting of such notice, and if an affidavit is made that the occupier, if dwelling within the sanitary district, has been served with a copy of such notice, or that a reasonable effort has been made to serve him, or, if living without the sanitary district, that a registered letter has been forwarded to his last known address.

3. No site shall be thus taken which is within three hundred yards of a dwelling-house, or which has any building or offices thereon, or which is enclosed or used as a garden, pleasure or recreation ground, or which forms part of any park or of any enclosed demesne lands, without the consent of the occupier of such house or lands, or which shall be within three hundred yards of any church, chapel, schoolhouse, factory, workshop, or other building where any trade or mercantile operation is being carried on.

4. The owner or occupier shall be entitled to such rent and compensation for damage as the Local Government Board may award, and such rent and compensation shall be paid by the sanitary authority of the district within one month after such award is made.

5. Not more than two statute acres shall be taken for any site; and within two months after it shall have been certified to the sanitary authority by the medical officer of the district that cholera has ceased to exist within the sanitary district, and that there is no longer any occasion for such temporary hospital, the sanitary authority shall remove the same and all foundations, débris, and other materials, and restore the surface of the ground to the same state in which it was found by them on taking possession, and they shall deliver up the possession to the person in whose occupation it was immediately prior to their taking possession thereof.

6. Any person molesting or obstructing the officers of or persons deputed by the sanitary authority when carrying out the provisions of this Act, shall be liable on conviction before a court of summary jurisdiction, composed of not less than two justices or one stipendiary magistrate, to a fine not exceeding five pounds or to a term of imprisonment not exceeding two months.

7. The powers conferred upon sanitary authorities by this Act shall not be exercised after the first day of May one thousand eight hundred and eighty-five.

8. This Act may be cited for all purposes as the Cholera Hospitals (Ireland) Act, 1884.

9. In any case in which the sanitary authorities of any maritime union have been directed by order of the Local Government Board to exercise jurisdiction for the prevention or suppression of cholera over any port which includes portions of any other union or unions, then the words "sanitary district" in this Act shall be construed to include such portions of the lands comprised within the limits of the said port as lie within one mile of high-water mark.

10. This Act shall extend to Ireland only.

CHAP. 60.

Metropolitan Asylum Board (Borrowing Powers) Act, 1884.

An Act to enable the Managers of the Metropolitan Asylums District to borrow for certain purposes of the Diseases Prevention (Metropolis) Act, 1883. (14th August 1884.)

WHEREAS by section six of the Diseases Prevention (Metropolis) Act, 1883, it is made the duty of the managers of the Metropolitan Asylum District, and they are thereby required, to provide certain wharves or landing places with convenient approaches thereto for the embarkation and landing of persons removed to or from any hospital ship or hospital belonging to the said managers, and for any other purposes in relation thereto:

And whereas doubts have arisen as to the powers of the said managers to borrow for the purpose of providing wharves or landing places and approaches, and also of providing vessels for use in connexion with the said wharves or landing places and the asylums and hospital ships of the said managers, and it is expedient to remove such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Metropolitan Asylum Board (Borrowing Powers) Act, 1884.

2. The provision by the said managers of wharves or landing places and approaches thereto, and the provision and erection of piers, floating dummies, and other necessary and proper erections, adjuncts, or conveniences in connexion with the said wharves or landing places which have been or at any time hereafter may be provided or erected, and the provision of vessels or boats for use in connexion with the said wharves or landing places and the asylums and hospital ships of the said managers which have been or at any time hereafter may be provided shall be deemed to have been and to be and shall be purposes for which the said managers have been and are authorised to borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts altering or amending the same.

CHAP. 61.

Supreme Court of Judicature Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Precedence of President of Probate, &c., Division.*
4. *Amendment of* 39 *&* 40 *Vict. c.* 39. *s.* 17.
5. *Absence, vacancies, and insufficiency in number of Judges.*
6. *Power of one Judge to sit for another.*
7. 13 *&* 14 *Vict. c.* 25. *extended to county court judges.*
8. *Appeals from referees.*
9. *Judge may order trial by an Official Referee in certain cases.*
10. *Causes which may be referred to arbitrator may be referred to Official Referee.*
11. *Parties under agreement of reference may refer to Official Referee.*
12. *Saving as to district registrars.*
13. *Summary applications under statutes.*
14. *Execution of instruments by order of the court.*
15. *Quo warranto.*
16. *Amendment of* 17 *&* 18 *Vict. c.* 34. *s.* 1.
17. *Power to transfer interpleader proceedings to County Court.*
18. *Jurisdiction of Inferior Courts in counter-claims.*
19. *Patronage under* 42 *&* 43 *Vict. c.* 78.
20. *Civil Service certificates for officers of Supreme Court.*
21. *Circuit officers.*
22. *Abolition of offices of sworn clerks to examiners in Chancery.*
23. *Power to make rules.*
24. *Rules for Inferior Courts.*

An Act to amend the Supreme Court of Judicature Acts; and for other purposes. (14th August 1884.)

WHEREAS it is expedient to make further provision concerning the Supreme Court of Judicature, and the officers thereof, and such other matters as are herein-after mentioned:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Supreme Court of Judicature Act, 1884; and this Act, together with the Supreme Court of Judicature Acts, 1873 to 1879, and the Supreme Court of Judicature Act, 1881, may be cited as the Supreme Court of Judicature Acts, 1873 to 1884.

2. This Act shall come into operation on the twenty-fourth day of October one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

3. The President for the time being of the Probate Divorce and Admiralty Division of the High Court of Justice shall have rank and precedence in the Court of Appeal next after all ordinary Judges of that Court appointed before the time at which he shall have become an ex-officio member thereof.

4. A Divisional Court of the Queen's Bench Division of the High Court of Justice may at any time be constituted of more than two Judges if the President of the said Division, with the concurrence of not less than two other Judges thereof, shall be of opinion that it is expedient so to constitute the same.

5. Upon the request of the Lord Chancellor it shall be lawful for any Judge of any Division of the High Court, who may consent so to do, to sit and act for or on behalf of any other Judge of the High Court absent from illness or any other cause, or in the place of any Judge whose office has become vacant, or as an additional Judge of any Division for the purpose of hearing any causes or matters which may be assigned to him by the Lord Chancellor, or any applications therein; and while so sitting and acting any such Judge shall have all the power and authority which such other Judge would have had, or which ordinarily belong to a Judge of such Division, as the case may be. Provided that no such additional Judge shall sit and act in any Division, except with the concurrence of the respective Presidents of the Division to which such Judge belongs, and of the Division in which he may have been requested to sit and act as additional Judge; and the assignment to such Judge of any causes or matters, depending in the Division in which he shall so sit and act, shall likewise not be made except with the concurrence of the President of such last-mentioned Division.

6. Any proceeding in any cause or matter assigned to any Judge of the High Court of Justice, may at any time, upon the request and on behalf of such Judge, be heard and disposed of by any other Judge of the same Division, who may be willing to hear and dispose of the same, without any transfer: Provided that, if any party to such proceeding shall object to the same being so heard and disposed of, the same shall not be so heard and disposed of without the concurrence of the Lord Chancellor, to be signified by an order in writing under his hand.

7. Judges of county courts shall have every qualification conferred on Her Majesty's Counsel learned in the law by the Act of the thirteenth and fourteenth Victoria, chapter twenty-five.

8. The provisions of section forty-five of the Supreme Court of Judicature Act, 1873, as to certain appeals therein mentioned, shall extend and apply to all appeals brought after the commencement of this Act from any award or certificate of a referee or arbitrator when there has been a compulsory reference to arbitration in any cause or matter in the Queen's Bench Division of the High Court of Justice.

9. In any cause or matter (other than a criminal proceeding by the Crown) now pending or hereafter commenced before the High Court of Justice or Court of Appeal, in which all parties who are under no disability consent thereto, the Court or a Judge may at any time, on such terms as may be thought proper, order the whole cause or matter to be tried before an Official Referee, who shall have power to direct in what manner the judgment of the Court shall be entered, and to exercise the same discretion as to costs as the Court or Judge could have exercised.

10. In all cases in which the Court or a Judge may, under sections three, six, or twelve of the Common Law Procedure Act, 1854, direct any matter to be ascertained by a Master or referred to an arbitrator, or to an officer of the Court, or appoint an arbitrator,

such Court or Judge may direct such matter to be ascertained by or referred to an Official Referee, who shall in that case perform all such duties and exercise all such powers as would have been performed or could have been exercised by such Master, arbitrator, or officer.

11. Whenever the parties to any deed or instrument in writing, made or executed after the commencement of this Act, or any of them, shall agree that any existing or future difference between them, or any of them, shall be referred to an Official Referee, it shall be the duty of any one of the Official Referees to whom application shall be made for the purpose, subject to any order which may be made by the Court or a Judge for the transfer of the matter to any other Official Referee, or otherwise, to hear and determine any difference so agreed to be referred, and every such agreement shall be deemed to be an agreement to refer to arbitration within the meaning of sections eleven and seventeen of the Common Law Procedure Act, 1854.

12. Nothing in this Act shall interfere with any existing provisions as to any proceedings before district registrars.

13. The provisions of section sixteen of the Act eighteen and nineteen Victoria, chapter one hundred and thirty-four, shall extend to all applications under any Act of Parliament heretofore passed, or hereafter to be passed, under or by virtue of which the High Court of Justice, or any Judge thereof, is empowered to make orders in respect of trust funds, or any other matters, upon petition presented, or motion made, in a summary way.

14. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or other document shall be executed, or that such negotiable instrument shall be indorsed by such person as the court may nominate for that purpose; and in such case the conveyance, contract, document, or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

15. Proceedings in quo warranto shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

16. Section one of the Act seventeen and eighteen Victoria chapter thirty-four entitled, "An Act to enable Courts of Law in England, "Ireland, and Scotland to issue process to "compel the attendance of witnesses out of "their jurisdiction, and to give effect to the "service of such process in any part of the "United Kingdom," is hereby amended so as to authorise and empower a Judge of the High Court to make orders as therein mentioned as well when the Court is sitting as at any other time.

17. If it shall appear to the Court or a Judge that any proceeding now pending or hereafter commenced in the High Court of Justice by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of five hundred pounds, (being the limit of the equitable jurisdiction given to County Courts by the County Courts Act, 1865,) may be more conveniently tried and determined in a County Court, the Court or Judge may at any time order the transfer thereof to any County Court, in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question; and every such order shall have the same effect as if it had been for the transfer of a suit or proceeding under section eight of the County Courts Act, 1867; and the County Court shall have jurisdiction and authority to proceed therein, as may be prescribed by any county court rules for the time being in force.

18. The jurisdiction of an Inferior Court in cases of counterclaim under sections eighty-nine and ninety of the Supreme Court of Judicature Act, 1873, shall not be excluded by reason (1) that any such counterclaim involves matter not within the local jurisdiction of such Inferior Court, but within the jurisdiction of any other Inferior Court in England; or (2) that, where the counterclaim involves more than one cause of action, as to each of which the defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the Court, the aggregate amount of the counterclaim exceeds the jurisdiction of the Court; or (3) that the counterclaim is for an amount of money exceeding the jurisdiction of the Court, provided that the plaintiff does not object in writing, within such time as may be prescribed by any rules, to the court giving relief exceeding that which the court would have had jurisdiction to administer prior to the commencement of this Act. In any case where

the counterclaim involves matter beyond the jurisdiction of the Court, notwithstanding the provisions of this section, the Court may, on such terms (if any) as the Court may think just, either adjourn the hearing of the case, or stay execution on the judgment, for such time as may be necessary to enable any party to apply to remove the proceedings into the High Court of Justice or to enable the defendant to prosecute in a Court of competent jurisdiction an action for the purpose of establishing his counterclaim; and in default of any such application being made, or action brought, the Court shall, after the expiration of the time limited, have jurisdiction to hear and determine the whole matter in controversy, to the same extent as if all parties had consented thereto.

19. The power and right of filling any vacancy in the office of Master of the Supreme Court, or in any clerkship in the Central Office, by section nine of the Supreme Court of Judicature (Officers) Act, 1879, vested, subject as therein mentioned, in the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, in rotation and in such order as they by agreement among themselves might determine, shall after the commencement of this Act be vested, subject as in the same Act mentioned, in the Lord Chancellor, the Lord Chief Justice of England, and the Master of the Rolls, in rotation or in such order or manner as they by agreement among themselves may determine.

20. The provisions of section twenty of "The Supreme Court of Judicature (Officers) Act, 1879," with respect to pensions under that Act, shall, as regards appointments made after the commencement of this Act, extend to salaries under that Act.

21. The power of appointment to such offices connected with the circuits of the Judges under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, or otherwise, as, before the Supreme Court of Judicature Act, 1873, came into operation, were in the appointment of the senior Judge going on any circuit, and also the power of appointment to all subordinate offices, the salaries of which are paid out of moneys provided by Parliament, and which may be held under any such circuit officers as aforesaid who may be appointed after the commencement of this Act, shall henceforth be vested in the senior Judge going on such circuit for the Winter and Summer Assizes, respectively: Provided that the power of appointment to any such subordinate offices, which before the Supreme Court of Judicature Act, 1873, came into operation were in the appointment of any such circuit officer as aforesaid, shall be deemed to be and be in the appointment of the person holding such circuit office at the time of the commencement of this Act, so long as he shall continue to hold the same office: Provided also that all such offices, whether principal or subordinate, as are in this section mentioned, shall be and remain subject to the provisions in the Supreme Court of Judicature Act, 1873, or any other Act contained, as to the abolition, reduction of salary, or alteration of the designation or duties of any such office, and to the provisions of section twenty-one of the Supreme Court of Judicature Act, 1881, in case of any vacancy in any such office; and that nothing in this Act shall take away or affect any power of appointment now vested by law in any Judge appointed before the Supreme Court of Judicature Act, 1873, came into operation.

22. The offices of the sworn clerks formerly attached to the office of the Chancery Examiners (which has ceased to exist) are hereby abolished, and the Treasury may, on the petition of any person affected by this section, award to him out of moneys provided by Parliament such compensation as, under the circumstances of the case, they think just and reasonable, regard being had to the conditions on which he was appointed to his office and the duration of his service: Provided that any compensation so granted shall be subject to the provisions of the twentieth section of the Act fourth and fifth William the Fourth, chapter twenty-four, and of the eleventh section of the Act twenty-second Victoria, chapter twenty-six.

23. The power to make rules conferred by section seventeen of the Supreme Court of Judicature Act, 1875, and enactments amending the same, shall be deemed to include the power to make rules for regulating the procedure on appeals from Inferior Courts to the High Court.

24. Where by virtue of any Statute or Charter or otherwise powers of making rules and orders for regulating the procedure or practice of or the costs or fees in any Inferior Court of civil jurisdiction are given to or have been exercised by the Judge of any such Court or any other person, either solely or jointly with any other person, and either with or without the concurrence of any Judge of Her Majesty's Supreme Court of Judicature or any

other person, any rules or orders made after the commencement of this Act by virtue of any such powers as aforesaid shall be subject to the concurrence of the authority for the time being empowered to make rules for the Supreme Court: Provided that the same authority may alter or annul any existing rule or order as to the matters aforesaid in any such court, if after communication with the judge or other person by whom such rule or order was made it shall think fit to do so, subject, where such rule has been made with the concurrence of any judge of the Supreme Court existing at the commencement of this Act, to the consent of such judge.

CHAP. 62.

Revenue Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

AMENDMENT OF LAW RELATING TO THE CUSTOMS.

2. *Vessels with inward cargo for more than one port may convey certain goods coastwise.*
3. *Master or owner to deliver manifest of goods shipped, and in case of steamships certificate of coal to be used on board.*
4. *Exemption of certain oriental plate.*
5. *Construction of Part I. of Act.*

PART II.

AMENDMENT OF LAW RELATING TO THE INLAND REVENUE.

6. *Poor Law parishes in England to be parishes for purposes of income tax and inhabited house duties.*
7. *Amendment of* 43 & 44 *Vict. c.* 19.
8. *Amendment of* 30 & 31 *Vict. c.* 23.
9. *Exemption from stamp duty of statutory declaration forming part of application for patent.*
10. *Amendment of* 33 & 34 *Vict. c.* 97. *as respects stamped certificates for solicitors of public departments and their clerks.*
11. *Representation in the United Kingdom to constitute the title to assets therein situate.*
12. *Licences for the sale of tobacco in railway carriages.*

PART III.

MISCELLANEOUS.

13. *Payment of sum due to Exchequer from Post Office in respect of expenses for grant of Government annuities.*
14. *Amendment of* 29 & 30 *Vict. c.* 39. *as to what constitutes vouchers in the case of certain payments out of money granted for army and navy services.*

An Act to amend the Law relating to the Customs and Inland Revenue and to the Audit of Public Accounts, and for other purposes connected with the Public Revenue and Expenditure.

(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Revenue Act, 1884.

PART I.

AMENDMENT OF LAW RELATING TO THE CUSTOMS.

2. (1.) Notwithstanding any provisions in the Customs Acts to the contrary it shall be lawful, on the arrival from parts beyond the seas of any ship, having on board cargo intended to be delivered at more than one port in the United Kingdom, to permit such ship to convey goods, not entitled to any drawback or liable to any duties of customs or excise, from any port at which such ship shall partially discharge her cargo to her port or ports of destination in the United Kingdom for delivery there, upon the complete separation of such goods from the inward cargo still on board being effected to the satisfaction of the collector or other proper officer at the port. Provided that such conveyance of goods from one port to another shall not constitute the ship a coasting ship within the meaning of the Customs Acts. The lading, unlading, and conveyance of goods under this section shall be subject to such regulations as the Commissioners of Customs may from time to time prescribe, and in case any goods shall be laden, unladen, conveyed, or dealt with contrary to such regulations, the goods shall be forfeited and the master of the ship shall forfeit the sum of twenty pounds.

(2.) Part of section one hundred and forty-two of the Customs Consolidation Act, 1876, that is to say, the words "and no goods shall "be laden on board any ship to be carried "coastwise until all goods brought in such "ship from parts beyond the seas shall have "been unladen" is hereby repealed.

3. (1.) Upon the exportation of any goods for which no bond is required, whether as whole or part cargo, the master or owner of the ship shall, by himself or his agent, within six days after the final clearance thereof, deliver to the proper officer of customs a manifest of all the shipped goods of every kind, setting forth the marks, numbers, and descriptions of the packages, and the names of the consignors thereof, according to the bills of lading relating thereto, and shall make and subscribe a declaration that such manifest contains a true account of all the cargo of the ship.

(2.) Provided that the non-delivery of a manifest as herein-before required shall not be an offence under this section if, with the specification or specifications prescribed by, and duly delivered in accordance with, section eleven of the Customs and Inland Revenue Act, 1881, there shall be delivered also to the proper officer of customs a declaration subscribed by the master, or owner, or the agent of the master or owner, of the ship, that there is contained in such specification or specifications a true account of all the shipped goods for which no bond is required, and if upon notice in writing from the proper officer of customs that a full and complete manifest must still be delivered, the same shall be duly furnished within forty-eight hours after such notice shall have been given. A notice addressed to the master or owner and delivered at the last known place of abode or business of the owner, or his agent, shall be deemed to be a sufficient notice to the master and owner under this section.

(3.) The master or owner of every steamship trading to a foreign port shall, by himself or his agent, within six days after the final clearance of the ship, deliver to the proper officer of customs a certificate of the quantity of coals or fuel shipped for use on the voyage.

(4.) If any of the requirements of this section be not complied with, or if any manifest or certificate delivered shall be incomplete or incorrect, then the master and the owner of the ship and also the agent subscribing the declaration or certificate shall each be liable to forfeit the sum of five pounds for every such offence, and they or any one of them at the election of the Commissioners of Customs may be proceeded against accordingly.

(5.) Section one hundred and eleven of the Customs Consolidation Act, 1876, is hereby repealed.

4. Articles of foreign plate which in the opinion of the Commissioners of Customs may be properly described as hand-chased, inlaid, bronzed or filigree work of oriental pattern, shall, subject to the payment of the proper duties of customs, be exempted from assay in the United Kingdom.

5. This part of this Act shall be construed as one with the Customs Consolidation Act, 1876, and Part One of the Revenue Act, 1883.

PART II.

AMENDMENT OF LAW RELATING TO THE INLAND REVENUE.

6. (1.) The parishes or places for the time being existing for the purposes of poor law administration in England elsewhere than in the Metropolis, as defined by the Valuation (Metropolis) Act, 1869, shall, after the fifth day of April one thousand eight hundred and eighty-five, and in the said Metropolis elsewhere than in the city of London shall, after the fifth day of April one thousand eight hundred and eighty-six, be the parishes and places for which the assessments of the duties of income tax and of the duties on inhabited houses shall be made, and for which assessors and collectors shall be appointed for the purpose of assessing and collecting the said duties.

(2.) In case any parish or place shall be partly in the jurisdiction of one body of general commissioners and partly in the jurisdiction of another body, or other bodies, of general commissioners, the Board of Inland Revenue shall, by order in writing, determine which of the two or several bodies of general commissioners shall have the jurisdiction, and the whole of the parish or place shall be within such jurisdiction accordingly.

(3.) If the Board of Inland Revenue shall at any time be of opinion that any parish or place is so large that for the sake of convenience it ought to be divided into districts for which separate assessors and collectors should be appointed, the Board may, with the sanction of the Commissioners of Her Majesty's Treasury, certify in writing to the general commissioners in whose jurisdiction the parish or place is, that the same shall be divided into the districts specified in the certificate at the time therein mentioned, and at and after that time each of such districts shall be treated as a parish or place for which a separate assessment of the said duties is to be made, and assessors and collectors are to be appointed.

(4.) Any such division may be at any time altered or annulled by the Board, with the sanction of the Commissioners of the Treasury, upon a certificate to that effect sent to the said general commissioners.

(5.) The union or grouping of parishes or places existing in conformity with law for the purposes of taxes or the collection thereof shall, subject to the powers for the dissolution of such union or grouping, continue in force so far as the same can so continue consistently with the provisions of this section, and the powers in relation to the union or grouping of parishes contained in the Taxes Management Act, 1880, shall remain in full force and effect so far as the same are capable of being exercised consistently with such provisions.

7. The Taxes Management Act, 1880, shall be amended as follows:—

(1.) The word "parish" in section ninety means in Scotland county or burgh, and with respect to the duties contained in the certificate mentioned in such section, the same shall in Scotland be recovered under the provisions contained in section ninety-seven.

(2.) No moveable goods and effects belonging to any person in Scotland at the time any of the duties or land tax became in arrear or were payable shall be liable to be taken by virtue of any poinding, sequestration, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects shall pay the duties or land tax so in arrear or payable, provided such duties or land tax shall not be claimed for more than one year; and in case the duties or land tax shall be claimed for more than one year then the party proceeding to take the said goods and effects after paying the duties and land tax for one whole year may proceed as he might have done if no duties and land tax had been so claimed. But if the said party refuses to pay the duties and land tax for one year, the duties and land tax so claimed shall be recovered by poinding, distraining, and selling the said moveable goods and effects notwithstanding under warrant obtained in conformity with the provisions contained in section ninety-seven.

(3.) Where an officer of Inland Revenue has been appointed to be an assessor within any county or burgh for the purposes of the Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter ninety-one, no other person shall be appointed to be assessor for the district or division of such officer for the duties to which the Taxes Management Act, 1880, relates, provided that where a person other than the officer of Inland Revenue of a district or division is assessor for or within such district or division at the time of the passing of this Act, he shall be as capable of being re-appointed assessor as if this Act had not been passed.

8. On and after the first day of August one thousand eight hundred and eighty-four the Act of the thirtieth and thirty-first years of the reign of Her present Majesty, chapter twenty-three, shall be amended as follows:—

(1.) In section four the term "sea insurance" shall include any insurance of goods, wares, or merchandise, or property of any description whatever, for any transit which includes not only a sea risk, but also any land risk from the commencement of such transit to the place of shipment, or from the place of discharge of the ship to the ultimate destination covered by the insurance, or in warehouse while waiting or being forwarded for shipment, or after discharge and while waiting to be forwarded or being forwarded to the ultimate destination covered by the insurance or any other land risk incidental to the transit insured.

(2.) Section eleven shall be read as if the words "thirty days" were substituted therein for the words "twenty-four hours."

(3.) The provision as to separate and distinct interests in Schedule B. is hereby repealed.

9. A statutory declaration made, either before or after the passing of this Act, under the provisions of the Statutory Declarations Act, 1835, and forming part of an application for a patent in conformity with the Patents, Designs, and Trade Marks Act, 1883, shall be deemed to have been and shall be exempt from the stamp duty of two shillings and sixpence charged on a statutory declaration made under the said provisions by the Stamp Act, 1870.

10. Whereas the Stamp Act, 1870, requires every person in any part of the United Kingdom who acts as an attorney, solicitor, proctor, writer to the signet, agent, procurator or notary public to take out annually a duly stamped certificate in manner required by the said Act: Be it enacted as follows:—

Nothing in the Stamp Act, 1870, shall require any such duly stamped certificate as is mentioned in section fifty-nine of that Act to be taken out by a person who is by law authorised to act as solicitor of a public department without admission, or by any assistant or clerk or officer appointed to act under the direction of such solicitor.

11. Notwithstanding any provision to the contrary contained in any local or private Act of Parliament, the production of a grant of representation from a court in the United Kingdom by probate or letters of administration or confirmation shall be necessary to establish the right to recover or receive any part of the personal estate and effects of any deceased person situated in the United Kingdom. Provided that, where any insurance company is authorised by a local or private Act of Parliament to pay money in respect of any policy of life insurance on production of a grant of representation obtained in the empire of India or in any of the colonies, the production of a grant of representation from a court in the United Kingdom shall not be necessary in case the policy was effected before the first day of July one thousand eight hundred and eighty-four. Nor shall such production be necessary in case the policy was effected on or after the said day if the company shall, before paying such money, have deducted therefrom, and paid to the Commissioners of Inland Revenue, the amount which would have been payable for duty in respect of the money if there had been a grant of representation from a court in the United Kingdom.

12. (1.) It shall be lawful for any railway company (including in such term any person or persons who is or are proprietor or proprietors of a railway or of carriages used for the conveyance of passengers upon a railway) to make application to the Commissioners of Inland Revenue for the grant of a licence or licences for the dealing in and sale of tobacco and snuff by any means personal, mechanical, or otherwise in any railway carriage of which such company are the proprietors.

(2.) Such application shall be made upon a form to be provided by the commissioners and containing such particulars as they may prescribe.

(3.) The licence shall be granted by the Commissioner upon payment in respect of each carriage of the excise duty of five shillings and threepence and shall expire on the fifth day of July after the date thereof.

(4.) All the enactments relating to the dealing in and sale of tobacco and snuff and excise licences shall be applicable to such carriages and licences, and every carriage in respect of which a licence is granted shall be deemed to be "premises" of a dealer in and seller of tobacco within the meaning of the enactments relating to the dealing in and sale of tobacco or snuff.

(5.) If any railway company shall deal in or sell tobacco or snuff, or suffer tobacco or snuff to be dealt in or sold in any railway carriage without having in force a licence authorising the company so to do, such company shall incur a fine of fifty pounds, and if in any proceedings for the recovery of such fine any question

shall arise as to the proprietorship of any railway carriage the proof of proprietorship shall lie upon the defendant.

PART III.

MISCELLANEOUS.

13. Whereas under the Government Annuities Acts, 1853, and 1864, and under the Greenwich Hospital Act, 1872, applying the first-mentioned Acts, fees are authorised to be charged which are applicable to meet the expenses of granting and managing Government annuities granted under the said Acts:

And whereas in the estimate submitted to the House of Commons for the expenses of granting and managing the said annuities, a note has been inserted to the effect that the amount expended for the said purpose would be repaid to the Exchequer out of fees:

And whereas the fees so taken have been insufficient to meet the said expenses, and consequently a sum is due from the Post Office to the Exchequer in respect of the said expenses, and it is expedient that the said sum should be written off: Be it therefore enacted as follows:—

The Commissioners of Her Majesty's Treasury may direct to be written off the claim of the Exchequer for any sum due in account from the Post Office in respect of the excess of the expenses of granting and managing Government annuities over and above the fees received in respect of such annuities.

14. Whereas under the Exchequer and Audit Departments Act, 1866, the Comptroller and Auditor-General is directed to ascertain whether the payments are supported by vouchers or proofs of payment:

And whereas it is expedient to define the nature of the documents which in certain cases are to constitute vouchers or proofs of payment. Be it therefore enacted as follows:—

Where payment out of money granted by Parliament for army services or navy services is made in respect of pay, wages, pensions, gratuities, or allowances to persons who are serving or have served in any of Her Majesty's naval or military forces, or are, or have been employed in any of Her Majesty's naval or military establishments, such payments may be made and witnessed in manner for the time being prescribed by regulations approved by the Treasury; and any pay sheet, list, certificate, or document showing any such payment when attested by the persons whose duty it is under the said regulations to make and witness that payment shall be a voucher or proof of payment for the purposes of section twenty-seven of the Exchequer and Audit Departments Act, 1866.

Any reference in any enactment, whether past or future, to the Comptroller and Auditor-General shall, unless anything in such enactment is inconsistent therewith, be deemed to refer to the Comptroller-General of the receipt and issue of Her Majesty's Exchequer and Auditor-General of public accounts appointed in pursuance of the Exchequer and Audit Departments Act, 1866.

This section shall be construed as part of the Exchequer and Audit Departments Act, 1866.

CHAP. 63.

Trusts (Scotland) Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definition of trust.*
3. *Powers of investment.*

An Act to amend the Trusts (Scotland) Act, 1867. (14th August 1884.)

WHEREAS by an Act passed in the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, intituled an Act to amend the law in Scotland relative to the resignation, powers, and liabilities of gratuitous trustees, and by an Act passed in the twenty-sixth and twenty-seventh years of the reign of Her present Majesty, intituled an Act to explain the Act for the amendment of the law relative to gratuitous trustees in Scotland, and by the Trusts (Scotland) Act, 1867, certain

powers are conferred on gratuitous trustees in Scotland:

And it is expedient to amend the said Acts, and to extend the powers thereby conferred:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Trusts (Scotland) Amendment Act, 1884, and the said Acts and this Act may be cited as the Trusts (Scotland) Acts, 1861 to 1884, and shall be read and construed together.

2. In the construction of the said recited Acts and of this Act,—

"Trust" shall mean and include any trust constituted by any deed or other writing, or by private or local Act of Parliament, or by resolution of any corporation or public or ecclesiastical body, and the appointment of any tutor, curator, or judicial factor by deed, decree, or otherwise.

"Trustee" shall include tutor, curator, and judicial factor.

"Judicial factor" shall mean any person judicially appointed factor upon a trust estate or upon the estate of a person incapable of managing his own affairs, factor loco tutoris, factor loco absentis, and curator bonis.

The words "East India Stock" shall have the meaning assigned to them by an Act passed in the session holden in the thirtieth and thirty-first years of Her present Majesty, chapter one hundred and thirty-two.

3. Trustees under any trust may, unless specially prohibited by the constitution or terms of the trust, invest the trust funds—

(*a.*) In the purchase of—

1. Any of the Government stocks, public funds, or securities of the United Kingdom:
2. Stock of the Bank of England:
3. Any securities the interest of which is or shall be guaranteed by Parliament:
4. Debenture stock of railway companies in Great Britain incorporated by Act of Parliament:
5. Preference, guaranteed, lien, annuity, or rentcharge stock, the dividend on which is not contingent on the profits of the year, of such railway companies in Great Britain as have paid a dividend on their ordinary stock for ten years immediately preceding the date of investment:
6. Stock or annuities issued by any municipal corporation in Great Britain, which annuities, or the interest or dividend upon which stock are secured upon rates or taxes levied by such municipal corporation under the authority of any Act of Parliament:
7. East India Stock, stocks or other public funds of the government of any colony of the United Kingdom approved by the Court of Session, and also bonds or documents of debt of any such government approved as aforesaid, provided such stocks, bonds, or others are not payable to the bearer:
8. Feu-duties or ground-annuals.

(*b.*) In loans—

9. On the security of any of the stocks, funds, or other property aforesaid:
10. On real or heritable security in Great Britain:
11. On debentures or mortgages of railway companies in Great Britain incorporated by Act of Parliament:
12. On bonds, debentures, or mortgages, secured on rates or taxes levied under the authority of any Act of Parliament, by municipal corporations in Great Britain authorised to borrow money on such security:
13. On Indian railway stock, debentures, bonds, or mortgages on which the interest is permanently guaranteed by the Indian Government and payable in sterling money in Great Britain:

Provided that the trustees shall not be held to be subject as defendants or respondents to the jurisdiction of any of Her Majesty's Courts of Law or Equity in England or Ireland, either as trustees or personally, in any suit for administration of the trust by reason of their having invested or lent trust funds as aforesaid;

and section five of the Trusts (Scotland) Act, 1867, is hereby repealed.

CHAP. 64.

Criminal Lunatics Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short titles.*
2. *Order for detention of insane prisoner as criminal lunatic.*
3. *Remitting of criminal lunatic to prison.*
4. *Periodical report of criminal lunatics.*
5. *Transfer and discharge (absolute or conditional) of criminal lunatic.*
6. *Duty of superintendent on discharge or expiration of sentence.*
7. *Person ceasing to be criminal lunatic and becoming pauper lunatic.*
8. *Provision as to detention of person becoming pauper lunatic.*
9. *Restriction on power of Secretary of State as regards lunatics not fit for ordinary asylum.*
10. *Provision as to expenses of maintenance of criminal lunatic.*
11. *Recapture of escaped lunatic, and punishment for rescuing or aiding to escape.*
12. *Treatment of imbeciles.*
13. *Saving of authority of Crown to make orders.*
14. *Provision as to existing criminal lunatics.*
15. *Making and execution of warrant of Secretary of State.*
16. *Interpretation of terms.*
17. *Repeal.*
18. *Commencement and extent of Act.*
SCHEDULES.

An Act to consolidate and amend the Law relating to Criminal Lunatics.
(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Criminal Lunatics Act, 1884.

The Acts mentioned in the First Schedule to this Act are in this Act referred to and may be cited by the short titles mentioned in the third column of the said Schedule.

2.—(1.) Where a prisoner is certified, in manner provided in this section, to be insane, a Secretary of State may if he thinks fit, by warrant direct such prisoner to be removed to the asylum named in the warrant, and thereupon such prisoner shall be removed to and received in such asylum, and, subject to the provisions of this Act relating to conditional discharge and otherwise, shall be detained therein, or in any other asylum to which he may be transferred in pursuance of this Act, as a criminal lunatic until he ceases to be a criminal lunatic.

(2.) A person shall cease to be a criminal lunatic if he is remitted to prison or absolutely discharged in manner provided by this Act, or if any term of penal servitude or imprisonment to which he may be subject determines.

(3.) Where it appears to any two members of the visiting committee of a prison that a prisoner in such prison, not being under sentence of death, is insane, they shall call to their assistance two legally qualified medical practitioners, and such members and practitioners shall examine such prisoner and inquire as to his insanity, and after such examination and inquiry may certify in writing that he is insane.

(4.) In the case of a prisoner under sentence of death, if it appears to a Secretary of State, either by means of a certificate signed by two members of the visiting committee of the prison in which such prisoner is confined, or by any other means, that there is reason to believe such prisoner to be insane, the Secretary of State shall appoint two or more legally qualified medical practitioners, and the said medical practitioners shall forthwith examine such prisoner and inquire as to his insanity, and after such examination and inquiry such practitioners shall make a report in writing to the Secretary of State as to the sanity of the prisoner, and they, or the majority of them, may certify in writing that he is insane.

(5.) The powers and duties by this section conferred and imposed on any two members of the visiting committee of a prison shall be exercised in the case of a prisoner in any prison within the jurisdiction of the Directors of Convict Prisons by the said directors or one of

them, and in the case of a prisoner in any prison within the jurisdiction of the Prison Commissioners may also be exercised by the said commissioners or one of them, and in the case of a prisoner in any prison not within the jurisdiction of such directors or commissioners shall be exercised by two visitors of the prison, or by two justices of the county or place in which such prison is situate.

3. Where it is certified by two legally qualified medical practitioners that a person being a criminal lunatic (not being a person with respect to whom a special verdict has been returned that he was guilty of the act or omission charged against him, but was insane at the time when he committed the act or made the omission) is sane, a Secretary of State, if satisfied that it is proper so to do, may by warrant direct such person to be remitted to prison, to be dealt with according to law.

4.—(1.) The superintendent of an asylum or other place in which any criminal lunatic is detained shall make a report to a Secretary of State at such times (not being less than once a year) and containing such particulars as the Secretary of State may require, of the condition and circumstances of every criminal lunatic in such asylum or place; and the Secretary of State shall, at least once in every three years during which a criminal lunatic is detained in any asylum or other place, take into consideration the condition, history, and circumstances of such lunatic, and determine whether he ought to be discharged or otherwise dealt with.

(2.) Where a criminal lunatic is conditionally discharged in pursuance of this Act, a report of his condition shall be made to a Secretary of State by such person at such times and containing such particulars as may be required by the warrant of discharge.

5.—(1.) A Secretary of State may from time to time by warrant direct the transfer to an asylum of any criminal lunatic detained in any other asylum or in any other place, and such criminal lunatic shall accordingly be received and detained in the asylum to which he is so transferred.

(2.) A Secretary of State by warrant may absolutely discharge any criminal lunatic, and may also discharge any criminal lunatic conditionally, that is to say, on such conditions as to the duration of such discharge and otherwise as the Secretary of State may think fit.

(3.) Where in pursuance of this section a criminal lunatic has been discharged conditionally, if any of the conditions of such discharge appear to a Secretary of State to be broken, or the conditional discharge is revoked, the Secretary of State may by warrant direct him to be taken into custody, and to be conveyed to some asylum named in the warrant; and he may thereupon be taken in like manner as if he had escaped from such asylum, and shall be received and detained therein as if he had been removed thereto in pursuance of the foregoing provisions of this Act.

6. Where a person, being a criminal lunatic, is detained in any asylum or place, and either he is absolutely discharged or the term of penal servitude or imprisonment to which he is subject determines, it shall be the duty of the superintendent of such asylum or place, unless satisfied that the said person is sane, to take all reasonable means for his being placed under the care of some relation or friend, or in some asylum or place for the reception of lunatics.

7.—(1.) Where a person being a criminal lunatic is detained in an asylum or other place, or being a prisoner in any prison is certified in manner provided by this Act to be insane, but has not been directed by the Secretary of State to be removed to an asylum, and it is made to appear to any justice of the peace having jurisdiction where such asylum or place or prison is situate, or being a member of the visiting committee of such prison, by notice in writing signed by the superintendent of such asylum or place, or by the governor of such prison, either—

(*a*) that such person is about to be absolutely discharged, or

(*b*) that any term of penal servitude or imprisonment to which such person is subject is about to determine,

and that in the opinion of such superintendent or governor such person is insane and unfit to be at large, the said justice shall examine such person and make any inquiry and take any medical or other evidence which he may deem necessary respecting him.

(2.) The said justice, if satisfied on such examination and inquiry that such person is insane and a proper person to be detained under care and treatment, shall make an order for his detention as a lunatic in the asylum or place of confinement for lunatics named in the order; and if within one month after the date of the said notice such criminal lunatic is absolutely discharged, or such term of penal service or imprisonment determines, the said order shall thereupon take effect, and he shall be deemed to be a pauper lunatic.

(3.) An order under this section shall be in

such form as may be prescribed by a Secretary of State, and there shall be inserted in every such order, wherever it be possible, the name and address of one or more of the relations of the lunatic.

(4.) At any time before a person for whose detention an order is made under this section is detained in an asylum or place of confinement for lunatics in pursuance thereof, such order may be amended or cancelled and a new order made by the justice who made the original order, or, if such justice is unable to act, by any other justice having jurisdiction in the same place.

8.—(1.) Where by virtue of an order made by a justice under this Act a person becomes a pauper lunatic, such person shall for the purposes of this Act be deemed to be primâ facie chargeable to the union or parish in the United Kingdom in which it appears to the justice making the order that the ordinary residence of such person was situate at the time when the offence in respect of which he became a criminal lunatic was alleged to have been committed, and, if such residence is not shown to the satisfaction of the said justice, then to such union or parish in the United Kingdom as follows, namely,—

(*a.*) To that in which it appears to the said justice that the said offence was alleged to have been committed; or,

(*b.*) If it appears that the offence was alleged to have been committed out of the United Kingdom, to that in which it appears to the said justice that such person was first apprehended for such offence; or,

(*c.*) If such person appears to have been so apprehended out of the United Kingdom, to that in which it appears to the said justice that such person first landed in the United Kingdom:

Provided that, if such person appears to the justice making the order to have been a man in the naval or military service of Her Majesty or to have been the wife or infant child of a man in such naval, or military service, at the time when the offence was alleged to have been committed, such person shall for the purposes of this Act be deemed to be primâ facie chargeable to the union or parish in the United Kingdom to which the man in such naval or military service appears to the said justice from the statements in the declaration made on his entry into the naval service of Her Majesty, or in his attestation paper on enlistment, or from other available information, to be by law chargeable for the puposes of the Acts relating to the relief of the poor.

(2.) Subject as herein-after mentioned, an order made by a justice under this Act for the detention of a person as a lunatic shall, on such person becoming a pauper lunatic, have the same effect as an order of a justice, and medical certificate, made in pursuance of section sixty-eight of the Lunatic Asylums Act, 1853, in the case of a lunatic found wandering at large in the union or parish to which such person is primâ facie chargeable, and all the provisions of the Lunacy Act, 1845, and of the Lunatic Asylums Act, 1853, and of any Acts amending those Acts or either of them shall apply accordingly in like manner as if such person had been sent from that union or parish:

And such person on becoming a pauper lunatic, if detained in an asylum or place of confinement to which lunatics may be sent in pursuance of the said Lunatic Asylums Act, 1853, shall be deemed to have been received therein in pursuance of the said order of detention, and if detained elsewhere shall be removed by a person named in the order, or any constable, to the asylum or place of confinement for lunatics named in the order, being one to which a justice can send a lunatic found wandering at large in the aforesaid union or parish:

Provided that if such pauper lunatic is certified by a legally qualified medical practitioner to be unfit for removal to such last-mentioned asylum or place of confinement, he may either be removed to and detained in any nearer asylum or place of confinement for lunatics willing to receive him, or may be detained in any asylum or place in which a criminal lunatic may be detained, but in either case he shall be deemed to have been sent to the asylum or place of confinement in which he is so detained, in pursuance of section sixty-eight of the Lunatic Asylums Act, 1853, and the expenses incurred in relation to such lunatic shall be defrayed, and the lunatic, when fit to be removed, may be removed accordingly, and where the lunatic is detained in any asylum or place to which lunatics cannot be sent, in pursuance of the Lunatic Asylums Act, 1853, the provisions of the above-mentioned Acts shall apply as if such asylum or place were an asylum within the meaning of the Lunatic Asylums Act, 1853, and the council of supervision or other persons having control thereof were visitors.

(3.) Provided that in any case where the union or parish to which a person will for the purposes of this Act be deemed to be primâ facie chargeable is in Scotland or Ireland, the justice making an order under this Act for the detention of such person as a lunatic shall report the same to a Secretary of State, and thereupon a Secretary of State, may, by warrant, direct the removal of such person upon

his becoming a pauper lunatic to Scotland or Ireland, as the case may be, and if he is unfit to be removed shall cause the expenses incurred in relation to such person to be paid and they shall be paid by the same persons and out of the same funds as if he had been actually removed.

(4.) Where such person is removed to Scotland, he shall be removed to the general prison at Perth, and may be dealt with in the same manner as if he were a person certified to be insane in pursuance of section twenty-three of the Lunacy (Scotland) Act, 1862, and had been committed to a local prison for the place to which he is primâ facie chargeable.

(5.) Where such person is removed to Ireland he shall be removed to the central criminal lunatic asylum established in pursuance of the Central Criminal Lunatic Asylum (Ireland) Act, 1845, and shall be received in the said central criminal lunatic asylum, and may be dealt with in manner provided by section twelve of the Lunatic Asylums (Ireland) Act, 1875, as if he were a person therein confined whose sentence had expired; but he shall not, by reason only that he is for the purposes of this Act deemed to be primâ facie chargeable to any union or parish, be deemed for the purposes of the said section to belong to the district comprising such union or parish.

9. With respect to the transfer by warrant of a Secretary of State, and the removal by order of a justice under this Act, of a person from an asylum for criminal lunatics appointed by Her Majesty, in pursuance of the Criminal Lunatic Asylums Act, 1860, to an asylum within the meaning of the Lunatic Asylums Act, 1853, the following provisions shall have effect:

(1.) The Secretary of State or justice shall be satisfied either, by a certificate from a legally qualified medical practitioner, that the said person is in such a state of insanity that he can be properly treated in an ordinary asylum, or that the committee of visitors of the asylum to which the said person is proposed to be transferred or removed consents to receive him;

(2.) If the said person becomes a pauper lunatic under this Act, and the consent to receive him of the committee of visitors of the asylum is required, and is not given, he may be removed to and detained in any asylum or place in which lunatics may be detained which is willing to receive him, and the costs of his removal to and maintenance in such asylum or place shall be defrayed by the said committee of visitors;

(3.) Where the said person has been transferred to any such asylum as a criminal lunatic, and the committee of visitors of the asylum satisfy a Secretary of State that the said criminal lunatic is in such a state of insanity that he cannot be properly treated in the said asylum, and request the Secretary of State to transfer him to some other asylum, the Secretary of State shall so transfer him, and the costs of that transfer shall be defrayed by the said committee of visitors;

(4.) Where a pauper lunatic under this section is removed to and detained in any asylum or place in consequence of the committee of visitors of an asylum not consenting to receive him, such pauper lunatic shall be deemed to have been sent to and to be detained in the said asylum or place, in pursuance of section sixty-eight of the Lunatic Asylums Act, 1853;

(5.) Any costs directed by this section to be defrayed by a committee of visitors shall be a simple contract debt of such committee of visitors, and shall be paid as part of the general expenses of the asylum.

10.—(1.) Subject as in this section mentioned, all expenses incurred under this Act in relation to a criminal lunatic while detained in an asylum, and all expenses of removing a person on his becoming under this Act a pauper lunatic to an asylum or place of confinement for lunatics in any part of the United Kingdom, shall be defrayed out of moneys provided by Parliament, and the costs of maintenance of a criminal lunatic in any asylum within the meaning of the Lunatic Asylums Act, 1853, shall be at the same rate as if he was a lunatic sent from a union or parish situate elsewhere than in the county or borough to which the asylum belongs.

(2.) Where a person, being a criminal lunatic, is absolutely discharged before the expiration of any term of penal servitude or imprisonment to which he is subject, or is conditionally discharged in pursuance of this Act, the Commissioners of Her Majesty's Treasury may from time to time contribute, out of moneys provided by Parliament, such sum or sums, on the recommendation of a Secretary of State, as they from time to time think fit towards the costs of the maintenance of such person, until the expiration of the said sentence, or so long as he continues to be subject to any conditions of discharge (as the case may be).

(3.) Section one hundred and four of the Lunatic Asylums Act, 1853, with respect to the application of the property of a lunatic for his maintenance and for the other charges in

the said section mentioned, and the other sections of the Lunatic Asylums Act, 1853, which are ancillary to the said section one hundred and four, shall extend to a criminal lunatic wherever he may be detained, and to his property, in like manner as if the said sections were herein re-enacted and in terms made applicable thereto, and any power exerciseable by justices under the said section may, for the purposes of this section, be exercised by two justices of the county or place where such lunatic is detained.

The Lord Chancellor, or other authority having power to make orders with respect to the property of a lunatic, under sections twelve, thirteen, and fourteen of the Lunacy Regulation Act, 1862, shall, if satisfied by affidavit or otherwise that a person is or has been a criminal lunatic, and continues to be insane and to be in confinement, have power to make any such order with respect to the property of such person, and the application thereof for the maintenance or benefit of him or his family, or for carrying on his trade or business, as may be made in pursuance of the said sections of the Lunacy Regulation Act, 1862.

(4.) When the criminal lunatic was a person removed from India in pursuance of the Lunatics Removal (India) Act, 1851, all expenses attending the removal of any such person from India, and his safe custody and maintenance, shall continue to be defrayed in the same manner as if this Act had not been passed.

11.—(1.) Sections eleven and twelve of the Criminal Lunatic Asylums Act, 1860, shall apply to every asylum or place in which criminal lunatics are confined so far as regards those lunatics, and to the criminal lunatics in such asylum or place, in all respects as if such asylum or place were an asylum for criminal lunatics appointed by Her Majesty in pursuance of that Act, and any officer, servant, or other person committing any such offence as is mentioned in the said section twelve shall be liable to be convicted and punished accordingly.

(2.) If a person escapes while being conveyed to an asylum or place in pursuance of this Act he may be re-taken at any time, in like manner as if he had escaped from the said asylum.

12. A Secretary of State may from time to time make, and when made revoke and vary, regulations for the treatment of persons sentenced to or ordered to be kept in penal servitude or imprisonment who appear, in accordance with the said regulations, to be from imbecility of mind either unfit for penal discipline or unfit for the same penal discipline as other prisoners.

13. Nothing in this Act shall restrain or affect the authority of Her Majesty, where She may so think fit, to make any order with respect to any person for whose safe custody during Her pleasure Her Majesty is by law authorised to give order.

14.—(1.) Subject as herein-after provided, this Act shall apply to any person who at the commencement of this Act is, in pursuance of the Acts relating to criminal lunatics, detained in an asylum or place of confinement for lunatics; provided that any such person detained in pursuance of section six of the Criminal Lunatics Act, 1867, shall on the commencement of this Act be deemed to be a person who has become under this Act a pauper lunatic.

(2.) An order under this Act for the detention of any person as a pauper lunatic may be made before the commencement of this Act, but shall not take effect until such commencement.

15. A warrant of a Secretary of State under this Act may be under the hand of a Secretary of State or of an Under Secretary of State, and may be executed by the person to whom it is addressed, or by any constable; and such warrant when it relates to a person not in custody may be executed in like manner as if it were a warrant for the arrest of a person charged with an offence, and it shall be the duty of every constable to aid in the execution of every warrant of a Secretary of State under this Act.

16. In this Act, if not inconsistent with the context, the following words and expressions have the meanings herein-after assigned to them respectively; that is to say,

"Criminal lunatic" means any of the following persons:—

(*a*) any person for whose safe custody during Her Majesty's pleasure Her Majesty or the Admiralty is authorised to give order; and

(*b*) any prisoner whom a Secretary of State or the Admiralty has in pursuance of any Act of Parliament directed to be removed to an asylum or other place for the reception of insane persons:

"Prison" means any prison or place of confinement to which a person may be committed whether on remand or for trial, safe custody, or punishment, or otherwise, under any other than civil process; and "prisoner" means any person so committed:

"Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"The Admiralty" means the Lord High Admiral of the United Kingdom, or any two or more of the Commissioners for executing the office of Lord High Admiral of the United Kingdom:

"Superintendent" includes any person in charge of an asylum or other place for the confinement of lunatics:

"Asylum" means an asylum within the meaning of the Lunatic Asylums Act, 1853, and an asylum for criminal lunatics appointed by Her Majesty in pursuance of the Criminal Lunatic Asylums Act, 1860, and includes a hospital registered for the reception of lunatics, but does not include a licensed house; provided that a hospital registered as aforesaid shall not be under any obligation by virtue of this Act to receive any criminal lunatic:

"Costs of maintenance" include, in relation to any lunatic, the cost of the lodging, clothing, medicine, and care of such lunatic; and "expenses incurred under "this Act in relation to a criminal lunatic" shall be deemed to include the costs of his maintenance as so defined.

17. The Acts mentioned in the Second Schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent shown in the third column of the said schedule; but this repeal shall not affect any warrant issued, or order made, or thing done in pursuance of any enactment so repealed.

18. This Act shall, save as in this Act otherwise provided, come into operation on the first day of November, one thousand eight hundred and eighty-four, which day is in this Act referred to as "the commencement of this Act."

Save as in this Act otherwise expressly provided, this Act shall not extend to Scotland or Ireland.

THE FIRST SCHEDULE.

Section 1.

Session and Chapter.	Title.	Short Title.
8 & 9 Vict. c. 100. -	An Act for the regulation of the care and treatment of lunatics.	The Lunacy Act, 1845.
8 & 9 Vict. c. 107. -	An Act for the establishment of a central asylum for insane persons charged with offences in Ireland; and to amend the Act relating to the prevention of offences by insane persons, and the Acts respecting asylums for the insane poor, in Ireland; and for appropriating the lunatic asylum in the city of Cork to the purposes of a district lunatic asylum.	The Central Criminal Lunatic Asylum (Ireland) Act, 1845.
14 & 15 Vict. c. 81. -	An Act to authorise the removal from India of insane persons charged with offences, and to give better effect to inquisitions of lunacy taken in India.	The Lunatics Removal (India) Act, 1851.
23 & 24 Vict. c. 75. -	An Act to make better provision for the custody and care of criminal lunatics.	The Criminal Lunatic Asylums Act, 1860.
25 & 26 Vict. c. 54. -	An Act to make further provision respecting lunacy in Scotland.	The Lunacy (Scotland) Act, 1862.

THE SECOND SCHEDULE.

Section 17.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
3 & 4 Vict. c. 54. -	An Act for making further provision for the confinement and maintenance of insane prisoners.	The whole Act.
6 & 7 Vict. c. 26. -	An Act for regulating the prison at Millbank.	Section twenty-one.
16 & 17 Vict. c. 96 -	An Act to amend an Act passed in the ninth year of Her Majesty "for the regulation "of the care and treatment "of lunatics."	Section thirty-eight from and including the words "save as herein-after provided;" to the end of that section.
23 & 24 Vict. c. 75. -	An Act to make better provision for the custody and care of criminal lunatics.	Section two, the words "of the Acts "herein-before mentioned, or under "any other," and the words "or to "be unfit from imbecility of mind "for penal discipline." Sections seven, nine, and ten.
25 & 26 Vict. c. 86. -	The Lunacy Regulation Act, 1862.	Section fifteen.
27 & 28 Vict. c. 29. -	An Act to amend the Act third and fourth Victoria, chapter fifty-four, for making further provision for the confinement and maintenance of insane prisoners.	The whole Act.
29 & 30 Vict. c. 109.	The Naval Discipline Act, 1866.	Section eighty, so far as relates to a person imprisoned in England.
30 & 31 Vict. c. 12. -	The Criminal Lunatics Act, 1867.	The whole Act.
32 & 33 Vict. c. 78. -	The Criminal Lunatics Act, 1869.	The whole Act.
44 & 45 Vict. c. 58. -	The Army Act, 1881 - -	In section one hundred and thirty so much of sub-section five as relates to a person imprisoned in England.
46 & 47 Vict. c. 38. -	The Trial of Lunatics Act, 1883.	Sub-section three of section two.

CHAP. 65.

New Parishes Acts and Church Building Acts Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

Amendment of New Parishes Acts.

2. *Power to dissolve district formed under New Parishes Acts.*
3. *Amendment of s.* 1. *of* 32 *&* 33 *Vict. c.* 94.

Amendment of Church Building Acts.

4. *Power to revoke or alter provision made under s.* 18. *of* 1 *&* 2 *Vict. c.* 107. *with respect to application of pew rents.*
5. *Short titles of Church Building Acts.*

SCHEDULE.

An Act to further amend the New Parishes Acts and the Church Building Acts. (14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the New Parishes Acts and Church Building Acts Amendment Act, 1884.

Amendment of New Parishes Acts.

2.—(1.) Where, under the New Parishes Acts, 1843, 1844, and 1856, or any of them, a district has been constituted, but a church has not been provided for or allotted to such district, it shall be lawful for the Ecclesiastical Commissioners for England, if it appears to them expedient, to submit (with the consent of the Bishop of the diocese under his hand) to her Majesty in Council a scheme for the dissolution of such district, and for the re-incorporation of its area or parts or part thereof in the parish or parishes or district or districts, out of which it was constituted, or for the addition of its area or parts or part thereof to some other parish or parishes or district or districts, as to the said Commissioners may appear most expedient.

(2.) If an endowment has been provided for the district so dissolved, any scheme under this section shall provide for its return to and revesting in the body or person who provided the same; and any such scheme may contain such other incidental or auxiliary provisions as the said Commissioners may deem necessary or proper.

(3.) The draft of any scheme made under this section must be delivered or transmitted to every incumbent or minister and patron affected thereby; and such scheme shall not be submitted to Her Majesty in Council until after the expiration of one month next after such draft shall have been so delivered or transmitted, unless every such incumbent or minister and patron shall in the meantime consent thereto; and if any person shall at the time of the ratification of such scheme be the incumbent or minister of the district proposed to be dissolved, the scheme shall not have any operation unless and until such person shall have consented thereto, or shall have ceased to be such incumbent or minister.

(4.) A map or plan showing every alteration of boundaries proposed to be effected by a scheme under this section shall be annexed to the draft scheme, and a copy of such map or plan settled so as to correspond with the provisions of the scheme as ratified, shall be registered by the registrar of the diocese, together with any Order of Her Majesty in Council ratifying such scheme, but it shall not be necessary to publish any such map or plan in the London Gazette.

(5.) Subject as aforesaid, the provisions of the said New Parishes Acts relative to the making, publication, and ratification of schemes shall apply to schemes under this section.

3. The powers as to alterations of boundaries contained in the first section of the New Parishes Acts and Church Building Acts Amendment Act, 1869, shall be applicable and may be exercised in the case of any district constituted under the New Parishes Acts, 1843, 1844, and 1856, or any of them, in which no church shall have been provided and consecrated, as well as in the case of a district which shall have become a new parish for ecclesiastical purposes.

Amendment of Church Building Acts.

4.—(1.) Where a church or chapel has been constituted the parish church of a parish in the stead of the ancient parish church under the Act passed in the year 1838, "To amend and render more effectual the Church Building Acts," and provision has been made under section eighteen of the same Act for the maintenance of the ministers and clerks of the respective churches, or either of them, out of the pew rents of either of such churches, it shall be lawful for the Ecclesiastical Commissioners for England from time to time by deed under their common seal, made with the consent of the Bishop of the diocese, and of every patron and minister affected thereby, to revoke in whole or part or in any way to alter as they may see fit the deed or other instrument making such provision.

(2.) A consent under this section must be testified by writing under the hand of the person giving the same, and attested by at least one witness.

(3.) Any deed or other instrument making such provision as aforesaid, which is expressed to be revoked or altered by a deed duly made in compliance with this section, shall to the extent of such revocation or alteration cease to be in force and become of no effect.

5. The Acts specified in the Schedule to this Act may together with this Act be collectively cited as the Church Building Acts, 1818 to 1884; and each of the said Acts may be cited by the short title in the third column of that schedule.

SCHEDULE.

Church Building Acts.

Session and Chapter.	Long Title.	Short Title.
58 Geo. 3. c. 45. [1818.]	An Act for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1818.
59 Geo. 3. c. 134. [1819.]	An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1819.
3 Geo. 4. c. 72. [1822.]	An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1822.
5 Geo. 4. c. 103. [1824.]	An Act to make further provision, and to amend and render more effectual, three Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, and in the third year of His present Majesty, for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1824.
7 & 8 Geo. 4. c. 72. [1827.]	An Act to amend the Acts for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1827.
1 & 2 Will. 4. c. 38. [1831.]	An Act to amend and render more effectual an Act passed in the seventh and eighth years of the reign of His late Majesty, intituled "An Act to amend the Acts for building and promoting the building of additional churches in populous parishes."	The Church Building Act, 1831.
2 & 3 Will. 4. c. 61. [1832.]	An Act to render more effectual an Act passed in the fifty-ninth year of His late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act passed in the last session of Parliament, for building and promoting the building of additional churches in populous parishes."	The Church Building Act, 1832.
1 & 2 Vict. c. 107. [1838.]	An Act to amend and render more effectual the Church Building Acts.	The Church Building Act, 1838.
2 & 3 Vict. c. 49. [1839.]	An Act to make better provision for the assignment of ecclesiastical districts to churches or chapels augmented by the Governors of the Bounty of Queen Anne, and for other purposes.	The Church Building Act, 1839.
3 & 4 Vict. c. 60. [1840.]	An Act to further amend the Church Building Acts.	The Church Building Act, 1840.

Session and Chapter.	Long Title.	Short Title.
7 & 8 Vict. c. 56. [1844.]	An Act concerning banns and marriages in certain district churches or chapels.	The Church Building (Banns and Marriages) Act, 1844.
8 & 9 Vict. c. 70. [1845.]	An Act for the further amendment of the Church Building Acts.	The Church Building Act, 1845.
9 & 10 Vict. c. 68. [1846.]	An Act for better enabling the burial service to be performed in one chapel where contiguous burial grounds shall have been provided for two or more parishes or places.	The Church Building (Burial Service in Chapels) Act, 1846.
11 & 12 Vict. c. 37. [1848.]	An Act to amend the law relative to the assignment of ecclesiastical districts.	The Church Building Act, 1848.
14 & 15 Vict. c. 97. [1851.]	An Act to amend the Church Building Acts.	The Church Building Act, 1851.
17 & 18 Vict. c. 32. [1854.]	An Act to facilitate the apportionment of the rent when parts of lands in lease are taken for the purposes of the Church Building Acts.	The Church Building Act, 1854.
19 & 20 Vict. c. 55. [1856.]	An Act for transferring the powers of the Church Building Commissioners to the Ecclesiastical Commissioners for England.	The Church Building Commissioners (Transfer of Powers) Act, 1855.
32 & 33 Vict. c. 94. [1869.]	An Act to amend the New Parishes Acts and Church Building Acts.	The New Parishes Acts and Church Building Acts Amendment Act, 1869.

CHAP. 66.

Bishopric of Bristol Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application of 41 & 42 Vict. c. 68.*
3. *Provisions as to constitution of Bishopric of Bristol.*
SCHEDULE.

An Act to provide for the disunion of the Sees of Gloucester and Bristol, and the constitution of a separate Bishopric of Bristol.

(14th August 1884.)

WHEREAS by an Order in Council made in pursuance of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-seven, intituled "An Act for carrying into effect the "reports of the Commissioners appointed to "consider the state of the Established Church "in England and Wales with reference to "ecclesiastical duties and revenues, so far as "they relate to episcopal dioceses, revenues, "and patronage," the sees of Gloucester and Bristol were united:

And whereas it is expedient that the said sees should be disunited and that the bishopric of Bristol should be reconstituted as a separate bishopric with a diocese and cathedral church in accordance with this Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and

consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Bishopric of Bristol Act, 1884.

2. Subject to the provisions of this Act, the Bishoprics Act, 1878, (in this Act referred to as the principal Act) shall have effect as if the bishopric of Bristol were a new bishopric mentioned in the schedule to the principal Act, and as if the schedule to this Act formed part of the schedule to the principal Act, and as if the principal Act had been passed at the date of the passing of this Act.

3. With respect to the constitution of the bishopric of Bristol in pursuance of this Act, the following provisions shall have effect, that is to say:

(1.) The dean and chapter of the cathedral church of Bristol shall be the dean and chapter of the bishopric of Bristol as constituted in pursuance of this Act, and in the construction of the principal Act shall be deemed to have been founded at the time at which the bishopric of Bristol is founded in pursuance of this Act and the principal Act, and so much of the principal Act as applies to the condition of a bishopric before a dean and chapter is constituted shall not apply to the bishopric of Bristol when founded in pursuance of this Act:

(2.) On the bishopric of Bristol being constituted as aforesaid, the sees of Gloucester and Bristol shall be disunited, and the bishop of the said see of Gloucester shall cease to be and to be called Bishop of Gloucester and Bristol, and shall continue to be and shall be called Bishop of Gloucester, and shall cease to possess and exercise within or in relation to any part of the diocese of Bristol as constituted in pursuance of this Act the rights, privileges, and jurisdictions conferred on the Bishop of Gloucester and Bristol at the union of the said bishoprics, but save as aforesaid, the said Bishop of Gloucester shall continue to have all such rights, privileges, and jurisdictions as may immediately before the constitution of the said bishopric of Bristol in pursuance of this Act be exerciseable by the Bishop of Gloucester and Bristol:

(3.) On the bishopric of Bristol being constituted as aforesaid, the existing episcopal consistory court of Gloucester shall be the court of the Bishop of Gloucester, and the existing episcopal consistory court of Bristol shall be the court of the Bishop of Bristol:

(4.) On all future avoidances of the see of Gloucester after the constitution of the bishopric of Bristol in pursuance of this Act, the licence for the election of a bishop of Gloucester shall issue to the dean and chapter of the cathedral church of Gloucester:

(5.) Her Majesty may in the Order in Council constituting the said bishopric of Bristol, or in any other Order in Council, insert such provisions as to Her Majesty may seem requisite for the purpose of effecting the disunion of the sees of Gloucester and Bristol, and carrying out the intentions of this Act in relation thereto; and the said provisions shall on the said Order in Council taking effect, have the same force as if enacted in this Act.

SCHEDULE.

Bishopric of Bristol.

1. The bishop to be Bishop of Bristol.
2. The diocese to consist of—
   (*a.*) The deanery of Bristol (City Division and Rural Division), and
   (*b.*) The following three deaneries of North Wilts, that is to say,
      Malmesbury North, and
      Malmesbury South, and
      Cricklade, and
   (*c.*) The following parishes in the county of Somerset, heretofore in the diocese of Bath and Wells; that is to say,
      Easton in Gordano with Pill, and
      Portbury, and
      Portishead.
3. The cathedral church of Bristol to be the cathedral church.

4. Subject to the rights enjoyed by any person at the passing of this Act, there shall be transferred to the endowment fund of the bishopric of Bristol, such portion of the endowment or income of the bishopric of Gloucester as would if no deduction were made for first-fruits and tenths, yield a net annual sum of five hundred pounds, but such transfer shall be subject to the payment by the Bishop of Bristol of a proportionate part of the first-fruits and tenths payable by the Bishop of Gloucester.

5. The bishop to be subject to the metropolitan jurisdiction of the Archbishop of Canterbury.

CHAP. 67.

Improvement of Lands (Ecclesiastical Benefices) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Ecclesiastical lands not to be charged for improvement without consent of patron and bishop.*
2. *Short title.*

An Act to prohibit charges for Improvements upon Ecclesiastical Lands otherwise than with the consent of the Patron and Bishop.

(14th August 1884.)

WHEREAS by the Improvement of Land Act, 1864, the Inclosure Commissioners for England and Wales (herein-after referred to as "the Commissioners") are empowered upon application of corporations to sanction the charging of their lands with moneys borrowed for the improvement thereof, and it is provided (section twenty) that when the land to which the application relates, or any part of such land, is held in right of any church, chapel, or other ecclesiastical benefice, the Commissioners shall not sanction any improvement of such land or of so much thereof as is so held unless and until the patron of the benefice and (in England) the bishop of the diocese shall signify to the Commissioners by writing under their hands their respective consents to such application:

And whereas there are in force certain Acts which have been passed as local and personal Acts, constituting companies with powers to advance moneys for the improvement of lands, under some of which Acts powers exist whereby the incumbents of benefices can charge their lands with moneys borrowed for the improvement thereof without such consent, and it is expedient to extend to all such cases similar provisions to that contained in the said section twenty of the Lands Improvement Act, 1864:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners shall not sanction any improvement of any land held in right of any church, chapel, or other ecclesiastical benefice unless and until the patron of such benefice, and the bishop of the diocese in which such lands are situate, shall signify to the Commissioners by writing under their hands their consent respectively to such application, nor shall any charge upon any such land of money expended, or purporting to be expended, for the improvement thereof, whether under any general or local Act, or any contract or agreement, be valid or effectual, and whether with or without the sanction of the Commissioners, unless and until the patron of the benefice and the bishop of the diocese shall have respectively signified their consent in writing thereto. Provided that nothing herein contained shall invalidate, or prejudicially affect, any charge which may have been validly and effectually made before the passing of this Act.

2. This Act may be cited as the Improvement of Lands (Ecclesiastical Benefices) Act, 1884.

CHAP. 68.

Matrimonial Causes Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Periodical payments in lieu of attachment.*
3. *Settlement of wife's property.*
4. *Power to vary orders.*
5. *Non-compliance with decree deemed to be desertion.*
6. *Custody, &c. of children.*
7. *Act to apply to England only.*

An Act to amend the Matrimonial Causes Acts. (14th August 1884.)

WHEREAS it is expedient to amend the law as to the restitution of conjugal rights in England:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Matrimonial Causes Act, 1884.

2. From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the Court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the Court, the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The Court may, if it shall think fit, order that the husband shall, to the satisfaction of the Court, secure to the wife such periodical payment, and for that purpose may refer it to any one of the Conveyancing Counsel of the Court to settle and approve of a proper deed or instrument to be executed by all necessary parties.

3. Where the application for restitution of conjugal rights is by the husband, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, or is in receipt of any profits of trade or earnings, the Court may, if it shall think fit, order a settlement to be made to the satisfaction of the Court of such property, or any part thereof, for the benefit of the petitioner and of the children of the marriage, or either or any of them, or may order such part as the Court may think reasonable of such profits of trade or earnings to be periodically paid by the respondent to the petitioner for his own benefit, or to the petitioner or any other person for the benefit of the children of the marriage, or either or any of them.

4. The Court may from time to time vary or modify any order for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same order wholly or in part, as the Court may think just.

5. If the respondent shall fail to comply with a decree of the Court for restitution of conjugal rights such respondent shall thereupon be deemed to have been guilty of desertion without reasonable cause, and a suit for judicial separation may be forthwith instituted, and a sentence of judicial separation may be pronounced although the period of two years may not have elapsed since the failure to comply with the decree for restitution of conjugal rights; and when any husband who has been guilty of desertion by failure on his part to comply with a decree for restitution of conjugal rights has also been guilty of adultery, the wife may forthwith present a petition for dissolution of her marriage, and the Court may pronounce a decree nisi for the dissolution of the marriage on the grounds of adultery coupled with desertion. Such decree nisi shall not be made absolute until after the expiration of six calendar months from the pronouncing thereof, unless the Court shall fix a shorter time.

6. The Court may, at any time before final decree on any application for restitution of conjugal rights, or after final decree if the respondent shall fail to comply therewith,

upon application for that purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of the children of the petitioner and respondent as might have been made by interim orders during the pendency of a trial for judicial separation between the same parties.

7. This Act shall not extend to Scotland or Ireland.

CHAP. 69.

Cholera, &c. Protection (Ireland) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Acquisition of sites for hospitals.*
3. *Incidence of charge.*

An Act to make better provision against Cholera and other dangerous Epidemic Diseases. (14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Cholera, &c. Protection (Ireland) Act, 1884.

2. When under the provisions of any Act the sanitary authority in Ireland is empowered to acquire a site for a cholera or other hospital within its district, it may, with the sanction of the Local Government Board, exercise such power for the acquisition of a site for such purpose without, but contiguous to, the said district.

3. Whenever, under clause three of the forty-sixth and forty-seventh Victoria, chapter fifty-nine, the Local Government Board, Ireland, directs any urban sanitary authority to superintend and see to the execution of such regulations, which otherwise would be the duty of any board or boards of guardians, the sanitary authority may, in any rate applicable to the purposes of the Public Health (Ireland) Act, 1878, insert a separate item for the amount necessary or estimated to be necessary to defray the expenses incurred by them in the execution and superintendence of such regulations, or in paying off any loan incurred by them under the second section of the Act of the session of the forty-sixth and forty-seventh years of the reign of Her present Majesty, chapter fifty-nine; and all the provisions of the Acts for the relief of the poor in Ireland relative to the division of rates between owners and occupiers of rateable hereditaments, and as to deductions from rent on account of rate, shall apply to such separate item as if it were a rate for the relief of the poor.

CHAP. 70.

Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

Corrupt Practices.

2. *Definition and punishment of corrupt practice at municipal election.*
3. *Incapacity of candidate reported guilty of corrupt practice.*

Illegal Practices.

4. *Certain expenditure to be illegal practice.*
5. *Expense in excess of maximum to be illegal practice.*
6. *Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.*
7. *Punishment on conviction of illegal practice.*
8. *Incapacity of candidate reported guilty of illegal practice.*

Illegal Payment, Employment, and Hiring.

9. *Providing of money for illegal practice or payment to be illegal payment.*
10. *Employment of hackney carriages, or of carriages and horses kept for hire.*
11. *Corrupt withdrawal from a candidature.*
12. *Certain expenditure to be illegal payment.*
13. *Certain employment to be illegal.*
14. *Name and address of printer on placards.*
15. *Saving for creditors.*
16. *Use of certain premises for committee rooms or meetings to be illegal hiring.*
17. *Punishment of illegal payment, employment, or hiring.*
18. *Avoidance of election for extensive illegal practices, &c.*

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

19. *Report exonerating candidate in certain cases of corrupt and illegal practice by agents.*
20. *Power of High Court and election court to except innocent act from being illegal practice, &c.*
21. *Sending in claims and making payments for election expenses.*

Disqualification of electors.

22. *Prohibition of persons guilty of offences from voting.*
23. *Application of ss. 37 & 38 of 46 & 47 Vict. c. 51.*
24. *List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.*

Proceedings on Election Petitions.

25. *Petition for illegal practice. Time for presentation of petition alleging illegal practices.*
26. *Withdrawal of election petition.*
27. *Continuation of trial of election petition.*
28. *Attendance of Director of public prosecutions on trial of election petition, and prosecution by him of offenders.*
29. *Power to election court to order payment by borough or individual of costs of election petition.*

Miscellaneous.

30. *General provisions as to prosecution of offences under this Act.*
31. *Person incapacited by conviction or report to vacate seat or office.*
32. *Payment and recovery of costs.*
33. *Service of notices.*
34. *Definitions.*
35. *Application to city of London of Act and of Part IV. of 45 & 46 Vict. c. 50.*

Application of Act to other Elections.

36. *Application of this Act and Part IV. of 45 & 46 Vict. c. 50. to other elections.*
37. *Exemption from provisions as to maximum expenses.*

Repeal.

38. *Repeal of Acts.*
39. *Commencement of Act.*

Extent of Act.

40. *Act not to extend to Scotland or Ireland.*
41. *Duration of Act.*

SCHEDULES.

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections.

(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

Corrupt Practices.

2. (1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.

3. (1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Illegal Practices.

4. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(*a*) on account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

(*b*) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(*c*) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

5. (1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account

of or in respect of the conduct or management of such election, save that in the case of an election of a councillor a sum may be paid and expense incurred not in excess of the maximum amount following; (that is to say,)

The sum of twenty-five pounds, and, if the number of electors in the borough or ward exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors.

(2.) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses shall, for each of such joint candidates, be reduced by one fourth, or if there are more than two joint candidates by one third.

(4.) Where two or more candidates at the election, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election: Provided that—

(*a.*) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates:

(*b.*) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates:

(*c.*) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate may be relieved accordingly from the consequences of having incurred such excess of expenses.

6. (1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.

(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.

7. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the borough in which the illegal practice has been committed.

8. (1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882, and a petition alleging such illegal practice may be presented and tried accordingly.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections.

(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

Corrupt Practices.

2. (1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.

3. (1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Illegal Practices.

4. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(*a*) on account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

(*b*) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(*c*) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

5. (1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account

and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

16. (1.) (*a.*) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(*b.*) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

17. (1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

(*a.*) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(*b.*) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(*c.*) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(*d.*) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

20. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the Court sufficient—

(*a.*) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

(*b.*) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

Illegal Payment, Employment, and Hiring.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

10. (1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2.) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

12. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

13. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

(*a*) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(*b*) one polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract bonâ fide made with any person in the ordinary course of business.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.

14. Every bill, placard, or poster having reference to a municipal election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

15. The provisions of this Act prohibiting certain payments and contracts for payments,

and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

16. (1.) (*a.*) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(*b.*) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

17. (1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

(*a.*) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(*b.*) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(*c.*) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(*d.*) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

20. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the Court sufficient—

(*a.*) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

(*b.*) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(c.) that such notice of the application has been given in the said borough as to the Court seems fit;

and under the circumstances it seems to the Court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

21. (1.) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice, but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2.) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3.) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect.

(4.) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same.

(5.) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice, and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(6.) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7.) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just.

(8.) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10.) The return and declaration sent in pursuance of this Act to the town clerk shall be

kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11.) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

Disqualification of Electors.

22. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part Two of the Third Schedule to this Act, shall apply as part of this Act.

24. (1.) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2.) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which such borough is situate.

(3.) The town clerk of any municipal borough shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5.) The revising authority shall determine such claims and objections and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6.) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7.) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the same is printed or published.

(9.) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned.

Proceedings on Election Petitions.

25. (1.) A municipal election petition complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse.

(2.) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.

(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

26. (1.) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of public prosecutions or his assistant, or other representative, may consider material.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration.

(7.) In every case of the withdrawal of an election petition, by leave of the election court such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

27. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued de die in diem on every lawful day until its conclusion.

28. (1.) On every trial of a municipal election petition the Director of public prosecutions shall by himself or by his assistant, or by such representative as herein-after mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6.) Upon such order being made,

(*a.*) if the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(*b.*) if the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(*c.*) if the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882.

(8.) The Director of public prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9.) The costs incurred in defraying the expenses of the Director of public prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution

paid by the Defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct.

29. (1.) Where upon the trial of a municipal election petition it appears to the election court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows:

(*a.*) if it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough; and

(*b.*) if it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct.

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause or matter in the High Court on the higher scale, as between solicitor and client.

Miscellaneous.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of public prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions:—

(*a.*) Where the Director of public prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough, he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

(*b.*) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections; and

(*c.*) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive.

31. If any person, in consequence of conviction or of the report of an election court

under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office, and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date.

32. (1.) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate.

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

34. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll.

35. This Act and Part IV. of the Municipal Corporations Act, 1882, shall apply to a municipal election in the city of London, subject as follows:—

(1.) For the purpose of such application "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes each of the aforesaid offices, and the expression "borough" shall be deemed to apply to the said city:

(2.) The expression "burgess" means, in relation to each municipal election, any person entitled to vote at such election:

(3.) Any costs or expenses directed to be paid out of the borough fund or borough rate shall, if incurred in respect of the election of an alderman or common councilman for any ward, be paid out of the ward rate of that ward, and in any other case shall be paid by the chamberlain of the said city out of the city's cash:

(4.) The enactments relating to personation, polling agents, and disclosure of votes shall not apply, save that if any person commits any offence under the City of London Municipal Elections Amendment Act, 1867, in relation to the declaration required by that Act to be made at the poll, he shall, in addition, be deemed guilty of a corrupt practice under this Act:

(5.) A vacancy in any office created by the decision of an election court shall be filled by a new election, and every summoning officer is hereby authorised and required to summon the electors for such election:

(6.) In the case of an election of an alderman and common councilman a sum may be paid and expense incurred not in excess of the maximum fixed by this Act for the election of a councillor.

(7.) In the case of an election by liverymen in common hall a sum may be paid and expenses incurred, if a poll be not demanded, not exceeding forty pounds, and, if a poll be demanded, then not exceeding two hundred and fifty pounds, and, in the event of a poll being demanded, such poll shall take place on the third day after the demand for a poll be made, unless such third day be a Sunday, in which case the poll shall take place on the fourth day, and the poll shall last for one day only, and commence at the hour of

eight in the morning and close at six in the evening.

(8.) The town clerk shall send the corrupt and illegal practices list, when made out by him, to the ward clerk of each ward not less than fourteen days before the day on which the list of persons entitled to vote in such ward is required to be made out, and the aldermen and common councilmen of each ward shall omit from such last-mentioned list the names of all persons mentioned in the corrupt and illegal practices list, and the corrupt and illegal practices list shall be printed and appended to every copy of the list of persons entitled to vote in such ward.

Application of Act to other elections.

36. (1.) Subject as herein-after mentioned, the provisions of this Act and of Part Four of the Municipal Corporations Act, 1882, as amended by this Act, shall extend to elections for the offices mentioned in the first column of the First Schedule to this Act as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election:

(*a.*) The area, officer, and rate mentioned opposite to the office in the second, third, and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.

(*b.*) The expression "corporate office" in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union, and "a municipal election" shall mean an election to such office, and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(*c.*) No corrupt and illegal practices list shall be made for any such election.

(*d.*) Vacancies created by the decision of an election court shall be filled by a new election.

(*e.*) A petition relating to the election of a guardian of a union may be tried at any place within the union.

(*f.*) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district or in the Metropolis;

(*g.*) Where the poll at any election to an office in the said schedule is taken by means of voting papers, such of the said provisions as relate to personation, polling agents, disclosure of votes and conveyance of voters, shall not apply; but any offence in relation to voting papers or to personation or to voting at such election which is punishable on summary conviction (that is to say,) the offences mentioned in section three of the Poor Law Amendment Act, 1851, and in rule sixty-nine of Schedule Two to the Public Health Act, 1875, shall, without prejudice to the punishment under such section and rule of a person guilty of such offence, be deemed to be an illegal practice within the meaning of the said provisions.

(*h.*) The Local Government Board shall have the same power as heretofore under section eight of the Poor Law Amendment Act, 1842, to determine any question arising as to the right of a person to act as guardian, except that the Board shall not have power—

(a.) To determine, until after the expiration of twenty-one days after the election of a person as guardian, any question which can be determined upon an election petition under this section; nor

(b.) To determine any question which is raised by an election petition under this section, and is either awaiting decision or has been decided by an election court; nor

(c.) To determine any question of general corruption, or of any corrupt or illegal practice, except so far as appears to such Board necessary for determining the validity of any vote.

(2.) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part Four of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of

any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act.

Repeal.

38. The Acts specified in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, but such repeal shall not affect anything duly done or suffered, or any right acquired or accrued, or any incapacity incurred, before the commencement of this Act; and any person subject to any incapacity under any enactment hereby repealed, or under any enactment for which such repealed enactment was substituted, shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act.

39. This Act shall come into operation on the first day of October one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

Extent of Act.

40. This Act shall not extend to Scotland or Ireland.

41. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer.

SCHEDULES.

FIRST SCHEDULE.

ELECTIONS to which this Act extends.

In England. Section 36.

Office.	Area.	Officer.	Rate.
Member of local board, as defined by the Public Health Act, 1875.	Local Government district or ward of such district.	Clerk to the local board, or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district or ward of such district.	Clerk to the Improvement Commissioners, or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the Poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board.	School district or division of the metropolis.	Returning officer of school board.	The school fund.

SECOND SCHEDULE.

Section 38.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

As to England.

33 & 34 Vict. c. 75. -	The Elementary Education Act, 1870.	Section thirty-three.
45 & 46 Vict. c. 50. -	The Municipal Corporations Act, 1882.	Section seventy-seven, from "corrupt practice" down to "or personation," and from "canvasser" down to "candidate at a municipal election."
		Section seventy-eight.
		Section seventy-nine.
		Section eighty.
		Section eighty-two.
		Section eighty-three.
		Section eighty-four.
		Section ninety-two, sub-section four, from "and those judges" down to the end of the sub-section.
		Section ninety-four, sub-sections five, six, seven, and eight.
		So much of section ninety-eight, sub-section two, as relates to the principles of taxation.

THIRD SCHEDULE.

Section 2.

PART I.

Enactments defining Corrupt Practices.—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854, 17 & 18 Vict. c. 102. sections 2 and 3.

S. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:—

(1.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4.) Every person who shall, upon or in

consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses bonâ fide occurred at or concerning any election.

S. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31 Vict. c. 102. s. 49.

S. 49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

Enactment defining the Offence of Personation.

The Ballot Act, 1872, 35 & 36 Vict. c. 33. s. 24.

S. 24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

Enactments defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51. ss. 1 and 2.

S. 1. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly, gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

S. 2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50. s. 77.

S. 77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any person, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

PART II.

Enactments relating to Disqualification of Electors.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51. sections 37 and 38.

S. 37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

S. 38. (1.) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court * * * to have been guilty, at an election, of any corrupt or illegal practice, the court * * * shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

* * * * *

(5.) Every person who, after the commencement of this Act, is reported by any election court * * * to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty * * *

(6.) Where a person who is a justice of the peace is reported by any election court * * * to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court * * * to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:—

(*a.*) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses:

(*b.*) If it appears to an election court * * * that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court * * * (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his

license, and such licensing justices shall cause such report to be entered in the proper register of licenses:

(c.) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

* * * * *

FOURTH SCHEDULE.

Form of Declaration by Candidate as to Expenses.

I , having been a candidate at the election of councillor for the borough [or ward] of , on the day of [and my agents do hereby solemnly and sincerely declare that I have paid] for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide, or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant *C.D.*

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E.F.*
Justice of the Peace for .

CHAP. 71.

Intestates Estates Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Recovery of personal estate of deceased person where administration granted to nominee of the Crown.*
3. *Limitation on proceedings to recover personal estate by or from Crown.*
4. *Escheat of real estate.*
5. *Power of court to sell interest of Crown in real estate.*
6. *Power to waive right of Crown in certain cases.*
7. *Definition of intestacy.*
8. *Application of Act to Duchy of Lancaster.*
9. *Application of Act to Ireland.*
10. *Extent of Act.*

An Act to amend the Law respecting the administration of the Personal Estate and the Escheat of the Real Estate of Deceased Persons; and for other purposes. (14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Intestates Estates Act, 1884.

2. Where the administration of the personal estate of any deceased person is granted to a nominee of Her Majesty (whether the Treasury Solicitor, or a person nominated by the Treasury Solicitor, or any other person), any action or other proceeding by or against such nominee for the recovery of the personal estate of such deceased person, or any share thereof, shall be of the same character, and be brought, instituted, and carried on in the same manner, and be subject to the same rules of law and equity (including the rules of limitation under the statutes of limitation or otherwise), in all respects as if the administration had been granted to such nominee as one of the next of kin of such deceased person.

3. After the passing of this Act an information or other proceeding on the part of Her Majesty shall not be filed or instituted, and a petition of right shall not be presented, in respect of the personal estate of any deceased person or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity in and subject to which an action for the like purpose might be brought by or against a subject.

4. From and after the passing of this Act, where a person dies without an heir and intestate in respect of any real estate consisting of any estate or interest whether legal or equitable in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, whether devised or not devised to trustees by the will of such person, the law of escheat shall apply in the same manner as if the estate or interest above mentioned were a legal estate in corporeal hereditaments.

5.—(1.) Where in any action or other proceeding in Her Majesty's High Court of Justice or in the Court of Chancery of the County Palatine of Lancaster it appears to the court that Her Majesty is entitled to any hereditament, corporeal or incorporeal, or to any estate or interest, legal or equitable, therein, such court may, on the application or with the consent of the Attorney-General, notwithstanding that no office has been found and no commission issued or executed, order a sale of the hereditament, estate, or interest, and such portion of the net proceeds of any such sale as represents the interest of Her Majesty shall be paid, invested, transferred, sold, or disposed of in manner provided by section four of the Treasury Solicitor Act, 1876.

(2.) Section one of the Act of the session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter fifty-five, intituled "An Act to extend the provisions of "the Trustee Act, 1850," shall apply on any such sale in like manner as if any estate or interest of Her Majesty comprised in the sale were vested in a subject.

6. Where a person dies without an heir and intestate in respect of all or any part of his real estate, whether his estate or interest therein is legal or equitable, and application is made for the waiver of any right of Her Majesty in respect of such intestacy to such estate by or on behalf of any person to whom, or to a trustee for whom, Her Majesty would, if Her Majesty's title had been duly found by inquisition, have power to grant such real estate, it shall be lawful for Her Majesty, by warrant under the hands of the Commissioners of Her Majesty's Treasury, or any two of them, to authorise the waiver of such right, on such terms, whether for the payment of money or otherwise, as may be specified in the warrant, and the Treasury Solicitor may, in pursuance of such warrant, convey to the person in whose favour such waiver is made the right of Her Majesty so waived: Provided, that if at any time not later than two years after such conveyance any person claiming any estate or interest in or to the said real estate demands that an inquisition in respect of Her Majesty's title shall be issued, and gives security to the satisfaction of the Treasury Solicitor for the costs of the issue and execution of such inquisition, such inquisition shall issue in like manner as if this section had not been enacted.

If no such inquisition issues, such conveyance shall be of the same effect as if it were a grant from Her Majesty after office found; and every person bringing an action to establish any claim to such real estate, or any part thereof, or interest therein, shall be in the same position and have the same rights as if he were traversing such office found.

7. Where any beneficial interest in the real estate of any deceased person, whether the estate or interest of such deceased person therein was legal or equitable, is, owing to the failure of the objects of the devise, or other circumstances happening before or after the death of such person, in whole or in part not effectually disposed of, such person shall be deemed, for the purposes of this Act, to have died intestate in respect of such part of the said beneficial interest as is ineffectually disposed of.

8. This Act shall extend to the Duchy of Lancaster, with this addition, that the Chancellor of the Duchy, the Attorney-General of the Duchy, and the Solicitor of the Duchy respectively, shall be substituted for the Commissioners of Her Majesty's Treasury, the Attorney-General, and the Treasury Solicitor respectively, and that the proceeds of any sale shall be applicable and be dealt with to all intents and purposes as such proceeds would or might have been applied or dealt with if the hereditaments, estate, or interest had been sold under or in pursuance of any other power in that behalf.

9. In the application of this Act to Ireland the following provisions shall take effect:

(*a.*) The Crown and Treasury Solicitor for Ireland shall be substituted for the Treasury Solicitor.

(*b.*) The reference to the Treasury Solicitor Act, 1876, shall not apply. The portion of the net proceeds of any sale under this Act which represents the interest of Her Majesty in the hereditament, estate, or interest sold shall be dealt with and disposed of in such manner as the Commissioners of Her Majesty's Treasury may be general or special order from time to time direct.

(*c.*) Her Majesty's High Court of Justice in Ireland and the Attorney-General for Ireland shall be substituted for the High Court of Justice and the Attorney-General.

10. This Act shall not extend to Scotland.

CHAP. 72.

Disused Burial Grounds Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation clause.*
3. *No buildings to be erected upon disused burial grounds, except for enlargement, &c.*
4. *Saving for buildings already sanctioned.*
5. *Saving of burial grounds sold by Act of Parliament.*

An Act for preventing the erection of Buildings on disused Burial Grounds. (14th August 1884.)

WHEREAS an Act was passed in the session of Parliament holden in the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, to amend the laws concerning the burial of the dead in the metropolis, and an Act was passed in the session holden in the sixteenth and seventeenth years of Her Majesty, chapter one hundred and thirty four, "to amend the "laws concerning the burial of the dead in "England, beyond the limits of the metro-"polis, and to amend the Act concerning the "burial of the dead in the metropolis": And whereas in pursuance of the provisions of the above recited Acts numerous Orders in Council have been made for the discontinuance of burials in certain burial grounds within the metropolis and elsewhere: And whereas it is expedient that no buildings should be erected on any burial ground affected by any of such Orders in Council:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Disused Burial Grounds Act, 1884.

2. In this Act a "disused burial ground" shall mean a burial ground in respect of which

an Order in Council has been made for the discontinuance of burials therein in pursuance of the provisions of the said recited Acts.

3. After the passing of this Act it shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship.

4. Nothing in this Act shall prevent the erection of any building on a disused burial ground for which a faculty has been obtained before the passing of this Act.

5. Nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament.

CHAP. 73.

Appropriation Act, 1884.

ABSTRACT OF THE ENACTMENTS.

Grant out of Consolidated Fund.

1. *Issue of* 37,827,299*l.* *out of the Consolidated Fund.*
2. *Power for the Treasury to borrow.*

Appropriation of Grants.

3. *Appropriation of sums voted for supply services.*
4. *Treasury may, in certain cases of exigency, authorise expenditure unprovided for: provided that the aggregate grants for the navy services and for the army services respectively be not exceeded.*
5. *Sanction for navy and army expenditure for* 1882–83 *unprovided for.*
6. *Declaration required in certain cases before receipt of sums appropriated.*
7. *Short title of Act.*

SCHEDULES.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-five, and to appropriate the Supplies granted in this Session of Parliament. (14th August 1884.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Grant out of Consolidated Fund.

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-five, the sum of thirty-seven million eight hundred and twenty-seven thousand two hundred and ninety-nine pounds.

2. The Commissioners of Her Majesty's Treasury may borrow from time to time, on the credit of the said sum of thirty-seven million eight hundred and twenty-seven thousand two hundred and ninety-nine pounds any sum or sums of equal or less amount in the whole, and shall repay the money so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any moneys so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form of the said Consolidated Fund, and be available in any manner in which such fund is available.

Appropriation of Grants.

3. All sums granted by this Act and the other Acts mentioned in Schedule (A.) annexed to this Act out of the said Consolidated Fund towards making good the supply granted to Her Majesty, amounting, as appears by the said Schedule, in the aggregate, to the sum of fifty-six million one hundred and sixty-four thousand one hundred and seventy-two pounds fourteen shillings and tenpence are appropriated and shall be deemed to have been appropriated as from the date of the passing of the first of the Acts mentioned in the said Schedule (A.) for the purposes and services expressed in Schedule (B.) annexed hereto.

The abstract of schedules and schedules annexed hereto, with the notes (if any) to such schedules, shall be deemed to be part of this Act in the same manner as if they had been contained in the body thereof.

4. If a necessity arise for incurring expenditure not provided for in the sums appropriated to naval and military services by this Act, and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course, each of the departments entrusted with the control over the said services shall forthwith make application in writing to the Commissioners of Her Majesty's Treasury for their authority to defray temporarily such expenditure out of any surpluses which may have been or which may be effected by the saving of expenditure upon votes within the same department, and in such application the department shall represent to the Commissioners of the Treasury the circumstances which may render such additional expenditure necessary, and thereupon the said Commissioners may authorise the expenditure unprovided for as aforesaid to be temporarily defrayed out of any surpluses which may have been or which may be effected as aforesaid upon votes within the same department; and a statement showing all cases in which the naval and military departments have obtained the sanction of the said Commissioners to any expenditure not provided for in the respective votes aforesaid, accompanied by copies of the representations made to them by the said departments, shall be laid before the House of Commons with the appropriation accounts of navy and army services for the year, in order that such proceedings may be submitted for the sanction of Parliament, and that provsion may be made for the deficiencies upon the several votes for the said services in such manner as Parliament may determine.

The Commissioners of the Treasury shall not authorise any expenditure which may cause an excess upon the aggregate sums appropriated by this Act for naval services and for army services respectively.

5. Whereas the Commissioners of the Treasury, under the powers vested in them by the Act of the session held in the forty-fifth and forty-sixth years of the reign of Her present Majesty, chapter seventy-one, have authorised expenditure not provided for in the sums appropriated by the said Act to certain votes for naval and military services for the year ended on the thirty-first day of March one thousand eight hundred and eighty-three, to be temporarily defrayed out of the balances (including surpluses of appropriations in aid) unexpended in respect of the sums appropriated to certain other votes for naval and military services for the said year; viz.,

1st. Expenditure of one hundred and fifty-one thousand nine hundred pounds seventeen shillings and tenpence for certain navy services unprovided for, temporarily defrayed out of the unexpended balances of certain votes for navy services, aided by the sum realised in excess of the estimated appropriations in aid.

2d. Expenditure of one hundred and seventeen thousand nine hundred and seventy-nine pounds eight shillings and fivepence for certain army services unprovided for, temporarily defrayed out of the unexpended balances of certain votes for army services, aided by the sum realised in excess of the estimated appropriations in aid:

It is enacted, that the application of the said sums is hereby sanctioned.

6. A person shall not receive any part of a grant which may be made in pursuance of this Act for half pay, or army, navy, or civil non-effective services until he has subscribed such declaration as may from time to time be prescribed by a warrant of the Commissioners of Her Majesty's Treasury before one of the persons prescribed by such warrant.

Provided that, whenever any such payment is made at more frequent intervals than once in a quarter, the Commissioners of Her

Majesty's Treasury may dispense with the production of more than one declaration in respect of each quarter.

Any person who makes a declaration for the purpose of this section, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

7. This Act may be cited for all purposes as the Appropriation Act, 1884.

ABSTRACT

OF

SCHEDULES (A.) and (B.) to which this Act refers.

SCHEDULE (A.)

	£	s.	d.
Grants out of the Consolidated Fund - - - - - -	56,164,172	14	10

SCHEDULE (B.)—APPROPRIATION OF GRANTS.

	£	s.	d.	£	s.	d.
1883-84.						
Part 1. Civil Services Deficiencies, 1882-83 - -	1,526	14	10			
,, 2. Civil Services and Revenue departments (Supplementary) 1883-84 - - - -	365,029	0	0			
,, 3. Navy (Supplementary) 1883-84 - - -	147,200	0	0			
,, 4. Army (Supplementary) 1883-84 - - -	370,900	0	0			
,, 5. Afghan War (Grant in Aid) (Supplementary) 1883-84 - - - - - - -	500,000	0	0			
				1,384,655	14	10
1884-85.						
Part 6. Navy - - - - - - - - - -				10,811,770	0	0
,, 7. Army - - - - - - - - - -				15,930,600	0	0
	£					
,, 8. Civil Services, Class I. - - - - -	1,803,802					
,, 9. Ditto, Class II. - - - - -	2,409,134					
,, 10. Ditto, Class III. - - - - -	6,414,813					
,, 11. Ditto, Class IV. - - - - -	4,860,403					
,, 12. Ditto, Class V. - - - - -	673,822					
,, 13. Ditto, Class VI. - - - - -	1,180,414					
,, 14. Ditto, Class VII. - - - -	36,694					
TOTAL CIVIL SERVICES - - - -				17,379,112	0	0
,, 15. Revenue Departments, &c. - - - - - -				9,952,028	0	0
,, 16. Advances for Greenwich Hospital and School - - -				156,007	0	0
,, 17. Afghan War (Grant in Aid) - - - - -				250,000	0	0
,, 18. Relief of General Gordon (Vote of Credit) - - - -				300,000	0	0
				£56,164,172	14	10

SCHEDULE (A.)

GRANTS OUT OF THE CONSOLIDATED FUND.

For the service of the years ending 31st March 1883 and 1884; viz.:—

	£	s.	d.
Under Act 47 Vict. c. 4.	1,384,655	14	10
For the service of the year ending 31st March 1885:—			
Under Act 47 Vict. c. 4.	10,432,850	0	0
Under Act 47 Vict. c. 15.	6,519,361	0	0
Under this Act	37,827,299	0	0
TOTAL	56,164,172	14	10

SCHEDULE (B.)—PART 1.

CIVIL SERVICES DEFICIENCIES, 1882–83.

SCHEDULE of SUMS granted to make good deficiencies on the several grants herein particularly mentioned for the year ended on the 31st day of March 1883; viz.:—

CIVIL SERVICES.

	£	s.	d.
CLASS II.			
Board of Trade	1,330	16	5
Record Office	40	0	8
Fishery Board, Scotland	104	7	6
Household, Lord Lieutenant of Ireland	33	5	6
CLASS VII.			
Temporary Commissions	18	4	9
TOTAL	1,526	14	10

SCHEDULE (B.)—PART 2.

CIVIL SERVICES AND REVENUE DEPARTMENTS SUPPLEMENTARY, 1883–84.

SCHEDULE of SUPPLEMENTARY SUMS granted to defray the charges for the Services herein particularly mentioned for the year ended on the 31st day of March 1884; viz.:—

CIVIL SERVICES.

CLASS I.	£
Royal Parks and Pleasure Grounds	1,454
Public Buildings, Great Britain	7,862
Public Offices Site	11,901
Metropolitan Police Court Buildings	290
New Courts of Justice and Offices	5,005
Shannon Navigation	2,003
Lighthouses abroad	1,000

	£
Class II.	
Treasury	1,766
Home Office	500
Bankruptcy Department of the Board of Trade	100
Charity Commission	2,350
Local Government Board	7,950
The Mint	5,000
Patent Office	1,453
Stationery and Printing	30,629
Secret Service	10,000
Local Government Board, Ireland	2,733
Public Works Office, Ireland	10,000
Class III.	
Chancery Division and Supreme Court	425
Central Office, Supreme Court	985
County Courts	9,916
Police, Great Britain	5,100
Convict Establishments in England and Colonies	100
Reformatory, &c. Schools, Great Britain	4,700
Broadmoor Criminal Lunatic Asylum	730
Law Charges, &c. Ireland	15,090
Supreme Court of Judicature, Ireland	1,194
Irish Land Commission	1,654
County Court Officers, Ireland	1,000
Dublin Metropolitan Police	18,000
Prisons, Ireland	2,110
Class IV.	
London University	335
South Wales University College	2,000
Class V.	
Diplomatic Services	27,600
Consular Services	1,000
Suppression of the Slave Trade	5,485
Tonnage Bounties and Liberated African Department	1,207
Suez Canal (British Directors)	155
Grants in Aid of Expenditure in certain Colonies	13,700
South Africa and St. Helena	11,327
Subsidy to Castle Mail Packets Company	8,000
Class VI.	
Superannuations and Retired Allowances	4,200
Class VII.	
Repayments to Civil Contingencies Fund	7,020
TOTAL CIVIL SERVICES	245,029

REVENUE DEPARTMENTS.	£
Post Office	102,000
Post Office Packet Service	10,000
TOTAL REVENUE DEPARTMENT	120,000
Grand Total	365,029

SCHEDULE (B.)—PART 3.

NAVY (SUPPLEMENTARY, 1883–84).

For defraying additional Expenditure arising out of military operations in Egypt, incurred during the year ended on the 31st day of March 1884 beyond the Sums granted by Parliament	£ 147,200

SCHEDULE (B.)—PART 4.

ARMY, SUPPLEMENTARY, 1883–84.

For defraying additional Expenditure incurred during the year ended on the 31st day of March 1884, for Army Services	£ 370,900

SCHEDULE (B.)—PART 5.

AFGHAN WAR (GRANT IN AID) SUPPLEMENTARY), 1883–84.

For the payment of a fifth instalment of a grant in aid of the expenditure incurred by the Government of India upon the war in Afghanistan in the years 1878–80, which became payable during the year ended on the 31st day of March 1884	£ 500,000

SCHEDULE (B.)—PART 6.

NAVY.

SCHEDULE of SUMS granted to defray the charges of the NAVY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For wages, &c. to 56,950 seamen and marines	2,671,800
2.	For victuals and clothing for seamen and marines	870,400
3.	For the expenses of the Admiralty Office	188,600
4.	For the expense of the coast guard service, the royal naval reserve, and seamen and marine pensioners reserve, and royal naval artillery volunteers	196,900
5.	For the expense of the several scientific departments of the navy	112,670
6.	For the expense of the dockyards and naval yards at home and abroad	1,573,600
7.	For the expense of the victualling yards at home and abroad	70,900
8.	For the expense of the medical establishments at home and abroad	66,400
9.	For the expense of the Marine Divisions	21,700
10.	Sect. 1. For naval stores for building, repairing, and outfitting the fleet and coast guard	1,124,500
	,, Sect. 2. For steam machinery, and ships built by contract, &c.	1,040,000
11.	For new works, buildings, machinery, and repairs in the naval establishments	481,700
12.	For medicines, medical stores, &c.	62,500
13.	For martial law, &c.	10,400
14.	For the expense of various miscellaneous services	116,900
15.	For half pay, reserved half pay, and retired pay to officers of the navy and marines	853,900
16.	Sect. 1. For military pensions and allowances	889,600
	,, Sect. 2. For civil pensions and allowances	328,400
17.	For freight of ships, for the victualling and conveyance of troops, on account of the army department	130,900
	TOTAL NAVY SERVICES £	10,811,770

SCHEDULE (B.)—PART 7.

ARMY.

SCHEDULE of SUMS granted to defray the charges for the ARMY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For the general staff and regimental pay, allowances, and charges of Her Majesty's land forces at home and abroad, exclusive of charges on India	4,230,000
2.	For divine service	57,500
3.	For administration of military law	36,800
4.	For medical establishments and services	303,000

No.		Sums not exceeding £
5.	For the pay and allowances of a force of militia, not exceeding 136,806 men, including 30,000 militia reserve	524,000
6.	For the yeomanry cavalry pay and allowances	69,000
7.	For the volunteer corps pay and allowances	568,500
8.	For the pay and allowances of a number of army reserve first class, not exceeding 42,500, and of the army reserve second class	343,000
9.	For commissariat, transport and ordnance store establishments, wages, &c.	438,800
10.	For provisions, forage, fuel, transport and other services	3,058,000
11.	For clothing establishments, services, and supplies	782,500
12.	For the supply, manufacture, and repair of warlike and other stores, including establishments of manufacturing departments	1,262,500
13.	For superintending establishment of, and expenditure for, works, buildings, and repairs at home and abroad	740,500
14.	For establishments for military education	127,200
15.	For miscellaneous effective services	31,600
16.	For the salaries and miscellaneous charges of the War Office	245,200
17.	For rewards for distinguished services, &c., exclusive of charges on India	20,300
18.	For half-pay, &c., of field marshals, and of general, regimental, and departmental officers, exclusive of charges on India	77,000
19.	For retired pay, retired full pay, and gratuities, for reduced and retired officers, including payments awarded by Army Purchase Commissioners, exclusive of charges on India	1,193,900
20.	For widows' pensions and gratuities, for allowances on the compassionate list, and for the relief fund, &c., exclusive of charges on India	120,000
21.	For pensions and gratuities to officers for wounds	17,000
22.	For Chelsea and Kilmainham hospitals, and the in-pensioners thereof	33,200
23.	For the out-pensioners of Chelsea Hospital, for pensions granted to discharged Negro soldiers, and for gratuities awarded in lieu of pensions, exclusive of charges on India	1,411,000
24.	For superannuation allowances	190,000
25.	For retired allowances, &c. to officers of the militia, yeomanry, and volunteer forces	50,100
	TOTAL ARMY SERVICES - £	15,930,600

SCHEDULE (B.)—PART 8.

CIVIL SERVICES.—CLASS I.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For the maintenance and repair of the royal palaces	36,603
2.	For the maintenance and repair of Marlborough House	2,160
3.	For the royal parks and pleasure gardens	111,685
4.	For the buildings of the Houses of Parliament (including a supplementary sum of 3,000*l.*)	36,063

No.		Sums not exceeding £
5.	For the maintenance and repair of public buildings in Great Britain and the Isle of Man, including various special works; for providing the necessary supply of water; for rents of houses hired for accommodation of public departments, and charges attendant thereon	146,555
6.	For the acquisition of a site for the Admiralty and War Office, and preliminary expenses, under the provisions of the Public Offices Site Act, 1882	75,000
7.	For the supply and repair of furniture in the public departments of Great Britain	16,740
8.	For the expenses of the Customs, Inland Revenue, Post Office, and Post Office Telegraph Buildings, in Great Britain, including furniture, fuel, and sundry miscellaneous services	274,116
9.	For new buildings for county courts, maintenance and repair of courts, supply of furniture, fuel, &c., and for charges attendant thereon	33,125
10.	For charges connected with Metropolitan Police Court Buildings	6,549
11.	For one half of the expense of erecting or improving court houses or offices for the sheriff courts in Scotland, and the expense of maintaining the courts erected or improved	10,516
12.	For the purchase of a site, erection of building, and other expenses for the new courts of justice and offices belonging thereto	25,469
13.	For the survey of the United Kingdom, including the revision of the survey of Ireland, maps for use in proceedings before the Land Judges in Ireland, publication of maps, and engraving the geological survey	242,500
14.	For erecting and maintaining new buildings, including rents, &c., for the Department of Science and Art	15,429
15.	For the maintenance and repair of the British Museum and Natural History Museum buildings, for rents of premises, supply of water, fuel, &c., and charges attendant thereon	8,711
16.	For the erection and fittings of a Natural History Museum	2,400
17.	For maintaining certain harbours, &c., under the Board of Trade	9,347
18.	For rates and contributions in lieu of rates in respect of Government property, and for salaries and expenses of the rating of Government property department	209,740
19.	For contribution to the funds for the establishment and maintenance of a fire brigade in the metropolis	10,000
20.	In aid of the cost of maintenance of disturnpiked and main roads in England and Wales during the year ended on the 25th day of March 1884	215,000
21.	In aid of the cost of maintenance of disturnpiked roads in Scotland during the year ended Whitsuntide 1884	35,000
22.	For erection, repairs, and maintenance of the several public works and buildings under the department of the Commissioners of Public Works in Ireland, and for the erection of fishery piers, and the maintenance of certain parks, harbours, and navigations	203,568
23.	For enclosing, adapting, and furnishing existing buildings purchased, and for additions to them for the purposes of the Royal University, Ireland	15,650
24.	For expenses preparatory to, and of the erection of the Museum of Science and Art National Library, and of the School of Art and Lecture Theatre in Dublin	5,000
25.	For erecting and maintaining certain lighthouses abroad	10,460
26.	For diplomatic and consular buildings, including rents and furniture, and for the maintenance of certain cemeteries abroad	46,416
	TOTAL CIVIL SERVICES, CLASS I. £	1,803,802

SCHEDULE (B.)—PART 9.

CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding
		£
1.	For salaries and expenses in the offices of the House of Lords	43,846
2.	For salaries and expenses in the offices of the House of Commons	51,388
3.	For salaries and expenses of the Department of Her Majesty's Treasury and in the office of the Parliamentary Counsel	59,609
4.	For salaries and expenses of the office of Her Majesty's Secretary of State for the Home Department and subordinate offices	93,113
5.	For salaries and expenses of the department of Her Majesty's Secretary of State for Foreign Affairs (including a supplementary sum of 5,000*l.*)	72,474
6.	For salaries and expenses of the department of Her Majesty's Secretary of State for the Colonies, including certain expenses connected with Emigration	40,411
7.	For salaries and expenses of the department of Her Majesty's Most Honourable Privy Council and subordinate departments	43,309
8.	For salaries and expenses of the office of the Lord Privy Seal	855
9.	For salaries and expenses of the office of the Committee of Privy Council for Trade, and subordinate departments	114,033
10.	For meeting the deficiency of income from fees, &c. for the requirements of the Board of Trade, under the Bankruptcy Act, 1883	2,377
11.	For salaries and expenses of the Charity Commission for England and Wales	34,811
12.	For salaries and expenses of the Civil Service Commission	32,762
13.	For salaries and expenses of the department of the Comptroller and Auditor General, including the Chancery Audit Branch	58,338
14.	For salaries and expenses of the Registry of Friendly Societies	8,592
15.	For the salaries and expenses of the office of the Land Commissioners for England, and for defraying the repayable expenses to be incurred in matters of Inclosure and Drainage	23,936
16.	For salaries and expenses of the Local Government Board, including various grants in aid of local taxation	440,757
17.	For salaries and expenses of the office of the Commissioners in Lunacy in England	15,052
18.	For salaries and expenses of the Mint, including the expenses of the coinage	69,307
19.	For salaries and expenses of the National Debt Office	15,557
20.	For charges connected with the Patents, Designs, and Trade Marks Act	35,178
21.	For salaries and expenses of the department of Her Majesty's Paymaster General in London and Dublin	26,503
22.	For salaries and expenses of the establishments under the Public Works Loan Commissioners	9,578
23.	For salaries and expenses of the Public Record Office in England	22,378
24.	For salaries and expenses of the department of the Registrar General of Births, &c. in England	48,012
25.	For stationery, printing, and paper, binding, and printed books, for the several departments of Government in England, Scotland, and Ireland, and some dependencies, and for the two Houses of Parliament; for the salaries and expenses of the Establishment of the Stationery Office, and the cost of Stationery Office publications, and of the Gazette Offices; and for sundry miscellaneous services, including a grant in aid of the publication of Parliamentary Debates	541,200
26.	For salaries and expenses of the office of Woods, Forests, and Land Revenues, and of the office of Land Revenue Records and Inrolments	23,340
27.	For salaries and expenses of the office of the Commissioners of Her Majesty's Works and Public Buildings	48,134

No.		Sums not exceeding £
28.	In aid of the Mercantile Marine Fund	40,000
29.	For Her Majesty's foreign and other secret services	33,000
30.	For salaries and expenses of the department of the Queen's and Lord Treasurer's Remembrancer in Exchequer, Scotland, of certain officers in Scotland, and other charges formerly on the hereditary revenue	6,310
31.	For salaries and expenses of the Fishery Board in Scotland, and for grants in aid of piers or quays	17,829
32.	For salaries and expenses of the Board of Lunacy in Scotland	5,954
33.	For salaries and expenses of the department of the Registrar General of Births, &c. in Scotland	5,777
34.	For salaries and expenses of the Board of Supervision for Relief of the Poor, and for expenses under the Public Health and Vaccination Acts, including certain grants in aid of local taxation in Scotland	28,518
35.	For salaries of the officers and attendants of the household of the Lord Lieutenant of Ireland and other expenses	7,429
36.	For salaries and expenses of the offices of the Chief Secretary to the Lord Lieutenant of Ireland, in Dublin and London, and subordinate departments	42,154
37.	For salaries and expenses of the office of the Commissioners of Charitable Donations and Bequests for Ireland	2,137
38.	For salaries and expenses of the Local Government Board in Ireland, including various grants in aid of local taxation	139,544
39.	For salaries and expenses of the Office of Public Works in Ireland	57,997
40.	For salaries and expenses of the Public Record Office and of the Keeper of the State Papers in Ireland	6,416
41.	For salaries and expenses of the department of the Registrar General of Births, &c., and for expenses of the collection of agricultural and emigration statistics in Ireland	16,126
42.	For salaries and expenses of the general valuation and boundary survey of Ireland	25,093
	TOTAL CIVIL SERVICES, CLASS II. £	2,409,134

SCHEDULE (B.)—PART 10.

CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For the salaries of the law officers, the salaries and expenses of the department of the Solicitor for the affairs of Her Majesty's Treasury, and of the department of the Queen's Proctor for divorce interventions, the costs of prosecutions, including those relating to the coin, and to bankruptcy, and of other legal proceedings conducted by those departments, and various other legal expenses, including Statute Law Revision and Parliamentary Agency	81,651
2.	For the salaries and expenses of the office of the Director of Public Prosecutions	3,907
3.	For criminal prosecutions at assizes and quarter sessions in England, and for adjudications under the Summary Jurisdiction Act, 1879, for sheriffs expenses, salaries to clerks of assize and other officers, compensation to clerks of the peace and others, and for expenses incurred under Extradition Treaties	169,764
4.	For such of the salaries and expenses of the Supreme Court of Judicature as are not charged on the Consolidated Fund	419,892

No.		Sums not exceeding £
5.	For salaries and expenses of the office of the Wreck Commissioner	13,578
6.	For salaries and expenses connected with the County Courts	446,726
7.	For salaries and expenses of the Office of Land Registry	5,442
8.	For the expense of revising barristers in England	18,690
9.	For salaries and expenses of the police courts of London and Sheerness	15,023
10.	For contribution towards the expenses of the metropolitan police, and of the horse patrol, and Thames police, and for the salaries of the Commissioner, Assistant Commissioners, and Receiver	529,875
10A.	For the expenses of police engaged in special duties	12,000
11.	For certain expenses connected with the police in counties and boroughs in England and Wales, and with the police in Scotland	970,298
12.	For the expenses of the Directors of convict establishments in England and the Colonies, and of the convict establishments under their control	405,109
13.	For the expenses of the Prisons Commissioners, England, and of the prisons under their control	474,869
14.	For the maintenance of juvenile offenders in reformatory, industrial, and day industrial schools in Great Britain, and for the salaries and expenses of the Inspectors of Reformatories	274,957
15.	For the maintenance of criminal lunatics in Broadmoor Criminal Lunatic Asylum, England, and of one criminal lunatic in Bethlem Hospital	28,772
16.	For salaries and expenses of the Lord Advocate's department and others connected with criminal proceedings in Scotland, including certain allowances under the Act 15 & 16 Vict. c. 83.	63,801
17.	For salaries and expenses of the Courts of Law and Justice in Scotland and other legal charges	62,657
18.	For salaries and expenses of the offices in Her Majesty's General Register House, Edinburgh	36,603
19.	For the expenses of the Prison Commissioners for Scotland, and of the prisons under their control, including the maintenance of criminal lunatics and the preparation of judicial statistics	109,897
20.	For the expense of criminal prosecutions and other law charges in Ireland, including certain allowances under the Act 15 & 16 Vict. c. 83.	99,031
21.	For such of the salaries and expenses of the Supreme Court of Judicature in Ireland as are not charged on the Consolidated Fund	90,066
22.	For salaries and incidental expenses of the Court of Bankruptcy in Ireland	10,061
23.	For salaries and expenses of the Admiralty Court Registry in Ireland	1,285
24.	For salaries and expenses of the Office for the Registration of Deeds in Ireland	18,670
25.	For salaries and expenses in the Office for the Registration of Judgments in Ireland	2,313
26.	For the salaries and expenses of the Office of the Irish Land Commission (including a supplementary sum of 25,340*l.*)	113,430
27.	For the salaries, allowances, and expenses of various county court officers, and of magistrates in Ireland, and of the revising barristers of the city of Dublin (including a supplementary sum of 1,096*l.*)	96,837
28.	For salaries and expenses of the Commissioners of Police, of the police courts and of the metropolitan police establishment of Dublin	146,094
29.	For the expenses of the Constabulary Force in Ireland	1,440,095
30.	For the expense of the General Prisons Board in Ireland, and of the prisons under their control; and of the registration of habitual criminals	149,980
31.	For the expenses of reformatories and industrial schools in Ireland	96,944
32.	For the maintenance of criminal lunatics in Dundrum Criminal Lunatic Asylum, Ireland	6,566
	TOTAL CIVIL SERVICES, CLASS III. £	6,414,813

SCHEDULE (B.)—PART 11.

CIVIL SERVICES.—CLASS IV.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For public education in England and Wales, including the expenses of the Education Office in London	3,016,167
2.	For salaries and expenses of the Department of Science and Art, and of the establishments connected therewith	364,825
3.	For salaries and expenses of the British Museum, including the amount required for the Natural History Museum	152,133
4.	For salaries and expenses of the National Gallery	16,643
5.	For salaries and expenses of the National Portrait Gallery	2,407
6.	For grants in aid of the expenditure of certain learned societies in Great Britain and Ireland	23,400
7.	For salaries and expenses of the University of London	12,346
8.	In aid of the expenses of University Colleges, Wales (including a supplementary sum of 2,500*l.*)	10,500
9.	For preparing an account of the scientific results of the expedition of Her Majesty's ship "Challenger" in 1873, 1874, 1875, and 1876, to investigate the physical and biological conditions of the great ocean basins, and of arranging the collections made during the expedition	5,752
10.	For the salaries and expenses connected with observations of the Transit of Venus 1882	355
11.	For public education in Scotland	475,413
12.	For grants to Scottish universities	19,031
13.	For the annuity to the Board of Trustees of manufactures in Scotland, in discharge of equivalents under the Treaty of Union, to be applied in maintenance of the National Gallery, School of Art and Museum of Antiquities, Scotland, and for the exhibition of the Torrie Collection of Works of Art, and for other purposes	2,100
13A.	For a contribution towards the cost of the purchase of a site for the erection of a Scottish National Portrait Gallery and Museum of Antiquities	5,000
14.	For public education under the Commissioners of National Education in Ireland	732,627
15.	For the salaries and expenses of the National School Teachers' Superannuation Office, Dublin	1,995
16.	For the salary and expenses of the Office of the Commissioners of Education in Ireland appointed for the regulation of endowed schools	670
17.	For salaries and expenses of the National Gallery of Ireland, and for the purchase of pictures	2,241
18.	In aid of the expenses of the Queen's Colleges in Ireland	14,378
19.	In aid of the expenses of the Royal Irish Academy	2,450
	TOTAL CIVIL SERVICES, CLASS IV. £	4,860,433

SCHEDULE (B.)—PART 12.

CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For expenses of Her Majesty's embassies and missions abroad (including a supplementary sum of 35,000*l.*)	247,975
2.	For consular establishments abroad, and for other expenditure chargeable on the Consular Vote (including a supplementary sum of 2,910*l.*)	255,402
3.	For the expenses incurred under treaties with foreign powers for suppressing the traffic in slaves, and for other services in connexion with that object (including a supplementary sum of 11,080*l.*)	28,670
4.	For tonnage bounties, bounties on slaves, costs of captors, &c., and expenses of the Liberated African Department	7,420
5.	For salaries and expenses of the three representatives of Her Majesty's Government on the Council of Administration of the Suez Canal Company	2,405
6.	In aid of colonial local revenue, and for the salaries and allowances of governors, &c., and for other charges connected with the colonies, including expenses incurred under the Pacific Islanders Protection Act, 1875	27,951
7.	For certain charges connected with the Orange River Territory, the Transvaal, Zululand, the island of St. Helena, and the High Commissioner for South Africa (including a supplementary sum of 30,000*l.*)	39,867
8.	For the subsidy to the Eastern and South African Telegraph Company and for the salary of the Official Director	35,300
9.	In aid of the revenue of the island of Cyprus	15,000
10.	For a subsidy to the Castle Mail Packets Company	13,832
	TOTAL CIVIL SERVICES, CLASS V. £	673,822

SCHEDULE (B.)—PART 13.

CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For superannuation and retired allowances to persons formerly employed in the public service, and for compassionate or other special allowances and gratuities awarded by the Commissioners of Her Majesty's Treasury	446,828
2.	For pensions to masters and seamen of the merchant service, and to their widows and children	22,000
3.	In aid of the local cost of maintenance of pauper lunatics in England and Wales	461,000
4.	In aid of the local cost of maintenance of pauper lunatics in Scotland	84,000
5.	In aid of the local cost of maintenance of pauper lunatics in Ireland	94,500
6.	For the support of certain hospitals and infirmaries in Ireland	16,747

No.		Sums not exceeding £
7.	For making good the deficiency arising from payments for interest to friendly societies	48,115
8.	For miscellaneous, charitable, and other allowances in Great Britain	3,101
9.	For certain miscellaneous, charitable, and other allowances in Ireland	3,248
10.	For enabling the Commissioners of Her Majesty's Treasury to contract for the redemption of certain yearly allowances charged on the Consolidated Fund	875
	TOTAL CIVIL SERVICES, CLASS VI. £	1,180,414

SCHEDULE (B.)—PART 14.

CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For salaries and incidental expenses of temporary commissions and committees, including special inquiries	26,776
2.	For certain miscellaneous expenses	7,193
3.	For expenses incurred in connexion with the funeral of His late Royal Highness the Duke of Albany	2,725
	TOTAL CIVIL SERVICES, CLASS VII. £	36,694

SCHEDULE (B.)—PART 15.

REVENUE DEPARTMENTS, &c.

SCHEDULE of SUMS granted to defray the charges of the several REVENUE DEPARTMENTS, &c. herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1885; viz.:—

No.		Sums not exceeding £
1.	For salaries and expenses of the Customs Department	986,951
2.	For salaries and expenses of the Inland Revenue Department	1,746,615
3.	For salaries and expenses of the Post Office services, the expenses of Post Office savings banks, and Government annuities and insurances, and the collection of the Post Office revenue	4,752,517
4.	For the Post Office packet service	731,356
5.	For salaries and expenses of the Post Office telegraph service	1,734,589
	TOTAL REVENUE DEPARTMENTS £	9,952,028

SCHEDULE (B.)—PART 16.

GREENWICH HOSPITAL AND SCHOOL.

	£
Advances during the year ending on the 31st day of March 1885 for defraying the expenses of Greenwich Hospital and School - - - - - -	156,007

SCHEDULE (B.)—PART 17.

AFGHAN WAR (GRANT IN AID).

	£
For paying an instalment of a grant in aid of the expenditure incurred by the Government of India upon the war in Afghanistan, in the years 1878–80, which will become due and payable during the year ending on the 31st day of March 1885 - - - - - - - - - - - - -	250,000

SCHEDULE (B.)—PART 18.

RELIEF OF GENERAL GORDON (VOTE OF CREDIT).

	£
For enabling Her Majesty to undertake operations for the relief of General Gordon, should they become necessary, and to make certain preparations in respect thereof (beyond the ordinary grants of Parliament for the year 1884–85)	300,000

CHAP. 74.

Public Health (Officers) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Restriction on recovery of penalties.*

An Act to amend the Public Health Act, 1875, with respect to the Officers of Local Authorities.

(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Health (Officers) Act, 1884, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

2. Proceedings for the recovery of any penalty under the hundred and ninety-third section of the principal Act shall not be taken except with the consent in writing of the Attorney-General.

CHAP. 75.

Canal Boats Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Certificate of registry made void by structural alterations.*
2. *Penalty for contravention of regulations under Canal Boats Acts.*
3. *Enforcement of Act by registration and sanitary authority, and report to be made.*
4. *Inquiries and reports by Local Government Board.*
5. *Power to make regulations as to school certificates, &c.*
6. *Annual report by Education Department.*
7. *Lettering and numbering of canal boats.*
8. *Application of fines.*
9. *Definition of term "by day."*
10. *Amendment of definition of canal boat.*
11. *Short title and construction of Act.*

An Act to amend the Canal Boats Act, 1877. (14th August 1884.)

WHEREAS it is expedient to amend the Canal Boats Act, 1877, in this Act referred to as the principal Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. A certificate of registration granted under the principal Act shall cease to be in force in the event of any structural alterations having been made in the canal boat affecting the conditions upon which the certificate of registration has been obtained.

2. If default is made in complying with any of the regulations made or to be made by the Local Government Board and Education Department under the principal Act or this Act, and for the time being in force, the master of the boat with respect to which the default is made, and also the owner of the boat, if in default, shall for each default be liable on summary conviction to a fine not exceeding twenty shillings.

3. It shall be the duty of every registration or sanitary authority within whose district any canal, or any part of a canal is situate, to enforce within such district the provisions of the principal Act and this Act, and any regulations made thereunder by the Local Government Board; and every such authority shall, within twenty-one days after the thirty-first day of December in every year, make a report to the Local Government Board as to the execution of the principal Act and this Act, and of the regulations made thereunder as aforesaid, and as to the steps taken by such authority during the year to give effect to the provisions of the said Acts and regulations.

4. The Local Government Board shall in every year present a report to both Houses of Parliament as to the execution of the principal Act and this Act, and the observance of the regulations made by them thereunder; and shall cause inquiries to be made from time to time by an inspector or inspectors to be appointed by them for that purpose.

Such inspectors shall for the purpose of any inquiry under this Act have, in relation to witnesses and their examination, the production of papers, and inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts, and may enter any canal boat at any time by day, and examine the same and every part thereof, and may, if need be, for the purpose of such inquiry detain the boat, but for no longer time than is necessary.

The master of the boat shall, if required by any such inspector, produce to him the certificate of registry, if any, of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such inspector may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such inspector under this section shall be deemed to be an obstruction of such inspector.

If such inspector is obstructed in the performance of his duty under this Act, the person obstructing him shall be liable to a fine not exceeding forty shillings.

5. The power to make regulations given to the Local Government Board by the

principal Act and this Act shall include power to the Education Department to make regulations with respect to the form of certificates or pass books as to attendance at school to be used by the children in canal boats.

6. The Education Department shall every year report to Parliament as to the manner in which the Elementary Education Acts, 1870 and 1873, 1876 and 1880, are enforced with respect to children in canal boats, and shall for that purpose direct Her Majesty's Inspector of Schools to communicate with the School Boards and School Attendance Committees in their district.

7. A canal boat shall not be deemed to be lettered, marked, and numbered in conformity with section three of the principal Act, unless it is so lettered, marked, and numbered on both sides of the canal boat, or in some suitable position on the stern of the boat, so that the lettering, marking, and numbering may be plainly visible from both sides of the canal whereon the boat may be.

8. Every fine recovered under the principal Act or this Act shall be paid in the case of a prosecution by any registration or sanitary authority or person authorised by any such authority to such authority or person, and if paid to such person shall be paid by him to such authority, and shall be applied towards the expenses of executing the principal Act and this Act, any Act to the contrary notwithstanding.

9. The expression "by day" in the principal Act and this Act shall be deemed to include the hours between six o'clock in the morning and nine o'clock at night.

10. If it shall at any time appear to the Local Government Board, on the representation of any registration or sanitary authority or of any inspector appointed under this Act, that the principal Act and this Act ought to apply to any vessel or class of vessels which would be within the definition of canal boat contained in section fourteen of the principal Act, if such vessel or class of vessels were not registered under the Merchant Shipping Act, 1854, and the Acts amending the same, the Local Government Board may declare that the principal Act and this Act shall apply to such vessel or class of vessels, although the same may be registered as aforesaid, and thereupon the same shall be deemed to be a canal boat or canal boats within the meaning of the principal Act and this Act, and the definition contained in section fourteen of the principal Act shall be amended accordingly.

11. This Act may be cited as the Canal Boats Act, 1884, and shall be construed as one with the Canal Boats Act, 1877, which Act and this Act may be cited together as the Canal Boats Acts, 1877 and 1884.

CHAP. 76.

Post Office (Protection) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short titles.*
2. *Commencement of Act.*

Protection of Post Offices, Postal Packets, and Stamps.

3. *Prohibition of placing injurious substances in or against post office letter boxes.*
4. *Prohibition of sending by post explosive, inflammable, or deleterious substances, or indecent prints, words, &c.*
5. *Prohibition of affixing placards, notices, &c. on post office or letter box, &c.*
6. *Prohibition of imitation of post office stamps, envelopes, forms, and marks.*
7. *Prohibition of fictitious stamps.*
8. *Prohibition of false notice as to reception of letters.*

Officers of Post Office.

9. *Commission of offences in post office, and obstruction of officers of post office.*
10. *Surrender of clothing by officer of post office on ceasing to be officer.*

Telegrams.

11. *Forgery, and improper disclosure of telegrams.*

Miscellaneous Amendments as to Offences.

12. *Recovery of fines.*
13. *Power to mitigate punishment.*
14. *Application of fines.*

Supplemental.

15. *Execution of instruments of the Postmaster General.*
16. *Saving clause as to liability.*
17. *Substitution of* 32 *&* 33 *Vict. c.* 18. *s.* 1 *in* 41 *&* 42 *Vict. c.* 76. *for* 31 *&* 32 *Vict. c.* 119. *s.* 33.
18. *Extent of Act.*
19. *Definitions for the purposes of* 7 *W.* 4. *&* 1 *Vict. c.* 36.
20. *Definitions.*
21. *Repeal.*

SCHEDULE.

An Act to amend the Law with respect to the Protection of the Post Office and to Offences committed in relation to the Post Office.

(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Post Office (Protection) Act, 1884.

This Act and the Post Office (Offences) Act, 1837, may be cited together as the Post Office (Offences) Acts, 1837 and 1884, and this Act and the Post Office (Management) Acts, 1837 to 1881, may be cited together as the Post Office (Management) Acts, 1837 to 1884.

This Act shall be deemed to be a Post Office Act within the meaning of the Post Office (Offences) Act, 1837.

2. This Act shall come into operation on the first day of September one thousand eight hundred and eighty-four (which day is in this Act referred to as the commencement of this Act).

Protection of Post Offices, Postal Packets, and Stamps.

3. A person shall not place or attempt to place in or against any post office letter box any fire, any match, any light, any explosive substance, any dangerous substance, any filth, any noxious or deleterious substance, or any fluid, and shall not commit a nuisance in or against any post office letter box, and shall not do or attempt to do anything likely to injure the box, appurtenances, or contents.

Any person who acts in contravention of this section shall be guilty of a misdemeanor, and be liable, on summary conviction, to a fine not exceeding ten pounds, and on conviction on indictment, to imprisonment, with or without hard labour, for a period not exceeding twelve months.

4.—(1.) A person shall not send or attempt to send a postal packet which either—

(*a.*) Encloses any explosive substance, any dangerous substance, any filth, any noxious or deleterious substance, any sharp instrument not properly protected, any living creature which is either noxious or likely to injure other postal packets in course of conveyance or an officer of the post office, or any article, or thing whatsoever which is likely to injure either other postal packets in course of conveyance or an officer of the Post Office; or

(*b.*) Encloses any indecent or obscene print, painting, photograph, lithograph, engraving, book, or card, or any indecent or obscene article, whether similar to the above or not; or

(*c.*) Has on such packet, or on the cover thereof, any words, marks, or designs of an indecent, obscene, or grossly offensive character.

(2.) Any person who acts in contravention of this section shall be guilty of a misdemeanor, and shall be liable, on summary conviction, to a fine not exceeding ten pounds, and on conviction on indictment, to imprisonment with or without hard labour for a period not exceeding twelve months.

(3.) The detention in the post office of any

postal packet on the ground of its being in contravention of this section, shall not exempt the sender thereof from any proceedings which might have been taken if the same had been delivered in due course of post.

5.—(1.) A person shall not, without due authority, affix or attempt to affix any placard, advertisement, notice, list, document, board, or thing on, or paint or tar any post office, post office letter box, telegraph post, or other property belonging to or used by or on behalf of the Postmaster General, and shall not in any way disfigure any such office, box, post, or property; and, notwithstanding anything in section nine of the Parliamentary and Municipal Registration Act, 1878, a notice or list referred to in that section shall not be affixed in or on any post office or any such property without authority from the Postmaster General; and where the Postmaster General is of opinion that any such notice or list cannot be so affixed without obstruction or inconvenience to the business of the post office, he may refuse such authority.

(2.) A person who acts in contravention of this section shall be liable on summary conviction to a fine not exceeding forty shillings.

6.—(1.) A person shall not, without due authority,—

(*a.*) make, issue, or send by post or otherwise any envelope, wrapper, card, form, or paper in imitation of one issued by or under the authority of the Postmaster General, or of any foreign or colonial postal authority, or having thereon any words, letters, or marks which signify or imply or may reasonably lead the recipient to believe that a post letter bearing the same is sent on Her Majesty's service; or

(*b.*) make on any envelope, wrapper, card, form, or paper for the purpose of being issued or sent by post or otherwise, or otherwise used, any mark in imitation of or similar to or purporting to be any stamp or mark of any post office under the Postmaster General, or under any foreign or colonial postal authority, or any words, letters, or marks which signify or imply or may reasonably lead the recipient thereof to believe that a post letter bearing the same is sent on Her Majesty's service; or

(*c.*) issue or send by post or otherwise any envelope, wrapper, card, form, or paper so marked.

(2.) A person who acts in contravention of this section shall be liable on summary conviction to a fine not exceeding forty shillings.

7. A person shall not—

(*a.*) Make, knowingly utter, deal in or sell any fictitious stamp, or knowingly use for any postal purpose any fictitious stamp; or

(*b.*) Have in his possession, unless he shows a lawful excuse, any fictitious stamp; or

(*c.*) Make, or, unless he shows a lawful excuse, have in his possession, any die, plate, instrument, or materials for making any fictitious stamp.

Any person who acts in contravention of this section shall be liable on summary conviction on a prosecution by order of the Commissioners of Inland Revenue to a fine not exceeding twenty pounds, subject to the like right of appeal as in the case of a penalty under the Acts relating to the excise.

Any stamp, die, plate, instrument, or materials found in the possession of any person in contravention of this section, may be seized and shall be forfeited.

For the purposes of this section "fictitious stamp" means any facsimile or imitation or representation, whether on paper or otherwise, of any stamp for denoting any rate of postage, including any stamp for denoting a rate of postage of any of Her Majesty's colonies, or of any foreign country.

8.—(1.) A person shall not, without authority from the Postmaster General, place or maintain in or on any house, wall, door, window, box, post, pillar, or other place belonging to him or under his control any of the words, letters, or marks following; (that is to say,)

(*a.*) the words "post office," or "postal telegraph office;" or

(*b.*) the words "letter box," accompanied with words, letters, or marks which signify or imply or may reasonably lead the public to believe that it is a post office letter box; or

(*c.*) any words, letters, or marks which signify or imply or may reasonably lead the public to believe that any house or place is a post office, or that any box is a post office letter box,

and a person, when required by a notice given by the Postmaster General to remove or efface any such words, letters, or marks as aforesaid, or to remove or effectually close up any letter box belonging to him or under his control which has been a post office letter box, shall comply with such request.

(2.) Any person who acts in contravention of this section shall be liable on summary conviction to a fine not exceeding forty shillings, and if the offence is continued after a previous conviction, to a fine not exceeding

five shillings for every day during which the offence so continues.

Officers of Post Office.

9.—(1.) Any person who wilfully obstructs, or incites anyone to obstruct, an officer of the post office in the execution of his duty, or who whilst in any post office, or within any premises belonging to any post office, or used therewith, obstructs the course of business of the post office, shall be liable on summary conviction to a fine not exceeding forty shillings.

(2.) Any officer of the post office may require any person guilty of an offence under this section to leave a post office or any such premises as aforesaid, and if such person refuses or fails to comply with such request, such person shall be liable to a further fine not exceeding five pounds, and may be removed by any officer of the post office, and all constables are required on demand to remove or assist in removing every such person.

10. Where an officer of the post office vacates his office (whether by reason of dismissal, resignation, death, or otherwise) he, or if he is dead his personal representative, or the person acting as his personal representative, shall deliver to such superior officer of the post office as may for the time being be directed by or in pursuance of the regulations of the Postmaster General, all articles (whether accoutrements, appointments, or other necessaries) which have been issued to the said officer vacating his office for the execution of his duty, and are not, under the regulations of the Postmaster General, the property of such officer, and shall deliver the same up at the time and place fixed by the superior officer to whom they are to be delivered, and shall deliver the same in good order and condition, fair wear and tear only excepted.

Any person who fails to comply with the provisions of this section shall be liable on summary conviction to pay a fine not exceeding forty shillings, and also such further sum not exceeding forty shillings as the court may determine to be the value of the articles not delivered, or, if the same have been delivered, but not in good order and condition, of the damage done to such articles.

Any justice of the peace may issue a warrant by virtue of which a constable may search for and seize any articles not delivered as required by this section, in like manner in all respects as if they were stolen goods and the warrant were a warrant to search for stolen goods.

Telegrams.

11. Every person who forges or wilfully and without due authority alters a telegram or utters a telegram knowing the same to be forged, or wilfully and without due authority altered, or who transmits by telegraph as a telegram, or utters as a telegram, any message or communication which he knows to be not a telegram, shall, whether he had or had not an intent to defraud, be guilty of a misdemeanor, and shall be liable, on summary conviction, to a fine not exceeding ten pounds, and, on conviction on indictment, to imprisonment with or without hard labour for a period not exceeding twelve months.

If any person, being in the employment of a telegraph company as defined by this section—

Improperly divulges to any person the purport of any telegram;

such person shall be guilty of a misdemeanor and be liable on summary conviction to a fine not exceeding twenty pounds, and on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine not exceeding two hundred pounds.

For the purposes of this section the expression "telegram" means a written or printed message or communication sent to or delivered at a post office, or the office of a telegraph company, for transmission by telegraph, or delivered by the post office or a telegraph company as a message or communication transmitted by telegraph.

The expression "telegraph company" means any company, corporation, or persons carrying on the business of sending telegrams for the public under whatever authority or in whatever manner such company, corporation, or persons may act or be constituted.

The expression "telegraph" has the same meaning as in "the Telegraph Act, 1869," and the Acts amending the same.

Miscellaneous Amendments as to Offences.

12.—(1.) All offences under this Act which are punishable on summary conviction may be prosecuted, and fines under this Act which are recoverable on summary conviction may be recovered,

(*a.*) In England in manner provided by the Summary Jurisdiction (English) Acts; and

(*b.*) In Scotland before the sheriff or sheriff substitute in manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and all necessary jurisdiction is hereby conferred on such sheriff and sheriff substitute; and

(*c.*) In Ireland within the police district of Dublin metropolis, in manner provided by the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district, and elsewhere in Ireland in manner

provided by the Petty Sessions (Ireland) Act, 1851, and any Act amending the same; and

(*d.*) In the Isle of Man before a high bailiff or two justices of the peace at the instance of an officer of the post office or of a constable in accordance with the law for the time being in force for regulating the exercise of summary jurisdiction by such bailiffs or justices; and

(*e.*) In the Channel Islands, or elsewhere than in the United Kingdom or the Isle of Man, before the court and in the manner provided by law, and if no provision is otherwise made by law, then at the instance of any officer of the post office before the court and in the manner before and in which the like offences and fines can be prosecuted and recovered.

(2.) In Scotland offences and fines which may be prosecuted and recovered on summary conviction in pursuance of this Act may be prosecuted and recovered, and proceedings may be taken at the instance of the procurator fiscal of the court as part of his official duty, or of any person on that behalf authorised by the Postmaster General.

(3.) Every offence under the Post Office Acts which is punishable with a pecuniary penalty or forfeiture of any sum not exceeding twenty pounds, whether with or without full costs of suit and expenses may be prosecuted, and such penalty, forfeiture, costs, and expenses may be recovered and the payment thereof enforced in manner in this section mentioned with respect to offences and fines under this Act.

(4.) Any offence punishable on indictment under this Act, whether it is or not also punishable on summary conviction, shall be deemed to be an indictable offence under the post office laws within the meaning of the First Schedule to the Summary Jurisdiction Act, 1879, and the schedule to the Summary Jurisdiction over Children (Ireland) Act, 1884.

(5.) On the prosecution of any offence under the Post Office Acts, whether on summary conviction or on indictment, evidence that any article is in the course of transmission by post or has been accepted on behalf of the Postmaster General for transmission by post shall be sufficient evidence that such article is a postal packet.

13. The court in England before whom a person is convicted on summary conviction of an offence under any of the Post Office Acts shall have the same power as a court of summary jurisdiction has in England under section four of the Summary Jurisdiction Act, 1879 (which relates to the mitigation of punishment).

The court before whom a person is convicted on indictment of an offence under any enactment of the Post Office Acts may mitigate the punishment fixed by such enactment for the offence as follows; that is to say, where the punishment mentioned in the enactment is or may be transportation the court shall award in lieu of it either penal servitude for any period not exceeding the period of transportation fixed by such enactment, and not less than the minimum period of penal servitude for the time being allowed by law, or imprisonment with or without hard labour for a term not exceeding two years.

14. All pecuniary penalties, forfeitures, fines, and other sums recovered in respect of an offence under the Post Office Acts shall, notwithstanding anything in any other Act, be paid into the Exchequer in such manner as the Treasury from time to time direct.

Supplemental.

15. Any instrument requiring to be executed by the Postmaster General, or to which he is a party, may be executed by any of the secretaries of the Post Office in the name of the Postmaster General, and, if so executed, shall be deemed to have been executed by the Postmaster General, and shall have effect accordingly.

Any instrument purporting to be executed by any of the secretaries of the Post Office in the name of the Postmaster General shall, until the contrary is proved, be deemed to have been so executed without proof of the official character of the person appearing to have executed the same.

16. This Act shall not exempt any person from any proceeding by indictment or otherwise for an offence which is punishable at common law, or under any Act other than this Act, so that no person be tried or punished twice for the same offence.

When proceedings are taken before any court against a person in respect of an offence under this Act, which is also an offence punishable at common law, or under some Act other than this Act, the Court may direct that instead of such proceedings being continued proceedings shall be taken for punishing such person at common law, or under some Act other than this Act.

17. Whereas by sections four and five of the Telegraph Act, 1878, section thirty-three of the Regulation of Railways Act, 1868, is, together with other sections of that Act, applied to the differences therein mentioned:

And whereas the said section thirty-three was repealed, and another section in lieu thereof enacted by the Lands Clauses Consolidation Act, 1869, and it is expedient to substitute a reference to the last-mentioned section for the reference to the repealed section: Be it therefore enacted as follows:

Any reference in the Telegraph Act, 1878, to section thirty-three of the Regulation of Railways Act, 1868, shall be construed to refer to section one of the Lands Clauses Consolidation Act, 1869.

18. This Act shall extend to the Isle of Man and to the Channel Islands, and the Royal Courts of the Channel Islands shall register the same accordingly.

19.—(1.) In this Act and in the Post Office (Offences) Act, 1837, and in any enactments incorporating or referring to that Act, or to be construed as one therewith, the following expressions shall, unless the context otherwise requires, have the meanings assigned to them by this section; (that is to say,)

The expression "post letter" shall mean a postal packet, as defined by this Act, from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed and a delivery of a postal packet of any description to a letter carrier or other person authorised to receive postal packets of that description for the post shall be a delivery to the post office, and a delivery at the house or office of the person to whom the postal packet is addressed, or to him or to his servant or agent, or other person considered to be authorised to receive the postal packet according to the usual manner of delivering that person's postal packets, shall be a delivery to the person addressed.

The expression "post office" shall mean any house, building, room, carriage, or place where postal packets, as defined by this Act, or any of them, are by the permission or under the authority of the Postmaster General, received, delivered, sorted, or made up, or from which such packets, or any of them, are by the authority of the Postmaster General despatched, and shall include any post office letter box.

The expression "post office letter box" shall include any pillar box, wall box, or other box or receptacle provided by the permission, or under the authority of the Postmaster General for the purpose of receiving postal packets, or any of them, for transmission by or under the authority of the Postmaster General.

(2.) Where it appears to the Postmaster General that any post office letter box, by reason of being on the premises of any private person or otherwise, is so situate as not to afford the same security against the improper removal of postal packets therefrom or other fraud as exists in the case of other post office letter boxes, he may declare that the same shall be a private posting box, and shall affix upon or near such box a notice of its being and of the effect of its being a private posting box, and a postal packet put into that box shall not for the purpose of any enactment, law, or contract whereby the due posting of a postal packet is evidence of the receipt thereof by the addressee be deemed to have been duly posted.

A certificate purporting to be signed by the Postmaster General or any secretary or assistant secretary of the post office and to the effect that any box or receptacle is or was provided by the permission or under the authority of the Postmaster General for the purpose of receiving postal packets, or any of them, shall in any legal proceeding be evidence of the facts stated in the certificate.

20. In this Act, unless the context otherwise requires,—

The expression "the Treasury" means the Commissioners of Her Majesty's Treasury.

The expression "postal packet" has the same meaning as in the Post Office Act, 1875, as amended by this Act, inclusive of such postal packets as are defined by regulations of the Treasury to be parcels, and includes a telegram.

The expression "telegraph post" means a post, pole, standard, stay, strut, or other above ground contrivance for carrying, suspending, or supporting a telegraph as defined by the Telegraph Act, 1869.

The expression "indictment" includes an information, and in the case of Scotland criminal letters.

The expression "misdemeanor" means as regards Scotland and the Channel Islands a crime and offence.

Other expressions shall have the same meaning as in the Post Office (Offences) Act, 1837.

21. The Acts mentioned in the schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent in the third column of that schedule mentioned. Provided that this repeal shall not affect—

(1.) Anything done or suffered before the commencement of this Act: or

(2.) Any legal proceeding, warrant, or other thing commenced, issued, or done before the commencement of this Act in pursuance of any enactment hereby repealed,

and any such legal proceeding, warrant, or thing, may be carried on, executed, and completed, as if this Act had not passed.

SCHEDULE.

A description or citation of a portion of an Act in this schedule is inclusive of the words, section, or other part first and last-mentioned or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 Will. 4 & 1 Vict. c. 36.	Post Office (Offences) Act, 1837.	Section five. Section thirteen, from "and any such justice shall" to "shall be sooner paid," and from "for the county or place" to the end of the section. Section fourteen. Section fifteen. Section sixteen. Section seventeen. Section nineteen. Section twenty. Section twenty-one. Section twenty-two. Section thirty-two. Section forty-one from "not less than seven" to "four years" and from "nor less than seven years," to the end of the section. Section forty-two from "and may also direct" to the end of the section. Section forty-three from "and on due proof being made" to "shall be satisfied." Section forty-five, so far as relates to any proceeding before a court of summary jurisdiction in England. Section forty-seven from "and the term post letter shall mean" down to "sorted, made up, or despatched."
3 & 4 Vict. c. 96 -	Post Office (Duties) Act, 1840	Section twenty-two from "not less than seven years" to the end of the section. Section twenty-nine the words "not less than two years." Section thirty the words "nor less than six calendar months." Section sixty-two.
38 & 39 Vict. c. 22 -	The Post Office Act, 1875 -	Section ten, from "every postal packet shall" to the end of the section.
42 & 43 Vict. c. 49 -	The Summary Jurisdiction Act, 1879.	Section fifty-three, from "every offence under the statutes" down to "provided by the Summary Jurisdiction Acts."
44 & 45 Vict. c. 20 -	The Post Office (Land) Act, 1881.	Section seven.
44 & 45 Vict. c. 33 -	The Summary Jurisdiction (Scotland) Act, 1881.	Section eleven, from "every offence under the statutes" down to "provided by the Summary Jurisdiction Acts."

CHAP. 77.

Public Health (Ireland) Amendment Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Dissolution or lapse of urban authority.*
3. *Provision in case the urban district is reconstituted.*
4. *Borrowing powers of towns included in rural districts.*
5. *Indemnity, and validation of Acts.*
6. *Application of Act.*

An Act to amend the Public Health (Ireland) Act, 1878, with reference to Sanitary Districts

(14th August 1884.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Health (Ireland) Amendment Act, 1884, and shall be construed as one with the Public Health (Ireland) Act, 1878.

2. Where the sanitary authority of an urban sanitary district is dissolved, or for any cause ceases to exist, the following provisions shall take effect:

(1.) It is hereby declared that the district (in this Act referred to as a lapsed urban district) shall cease to constitute an urban district, and shall become part of some rural district under the sixth section of the Public Health (Ireland) Act, 1878, and be thenceforth subject to the enactments of the said Act relating to rural districts, as amended by this Act:

(2.) All property, real and personal, including things in action, and including interests, rights, and easements in, to, and out of property belonging to the urban authority, shall without any conveyance or assignment thereof, be transferred to and vested in the rural sanitary authority of such rural district, subject to any charges or incumbrances affecting the same, and shall be maintained, managed, and administered by the rural authority for the benefit of the lapsed urban district, and with reference to such property, the rural authority shall be deemed to be the successors of the urban authority:

(3.) All debts, including arrears of rates of every description, and all things in action, belonging to the urban authority in their capacity as such urban sanitary authority, or in their capacity as governing body of the district under the Towns Improvement (Ireland) Act, 1854, or any other Act, shall, without any assignment thereof, be transferred to and vested in the rural authority;

Any debt due to the urban authority, in their capacity as sanitary authority or otherwise as aforesaid, may be recovered, and any legal proceedings which the urban authority in any such capacity as aforesaid might have instituted or carried on may be instituted or carried on, by the rural authority, in their own name:

(4.) For the purposes of this Act, the town hall or other municipal buildings of the urban authority shall be deemed to be property belonging to them in their capacity as sanitary authority.

Such transfer and vesting shall not take effect until the Commissioners of the Treasury have signified their assent thereto, in such manner and subject to such conditions as they think fit; upon such assent being signified, the transfer and vesting shall be deemed to have taken place at the time of the dissolution or cesser of the urban authority.

(5.) All debts due by the urban authority in their capacity as sanitary authority or otherwise (including all sums which the urban authority would have become liable to pay under or in consequence of any obligation incurred by them before their dissolution or cesser) shall be paid by the rural authority, in the manner in which they should have been paid by the urban authority if such urban authority had not been dissolved or ceased to exist. Such payment shall be made out of any moneys or property charged with or applicable to such payment, or out of rates levied by the rural authority in the lapsed urban district under the authority of an Order of the Local Government Board made in accordance with this Act:

(6.) The Local Government Board may, by

Order to be published in the Dublin Gazette, or in such other manner as the Local Government Board may direct, declare any provisions of the Public Health (Ireland) Act, 1878, which are applicable to urban districts, and which are in the opinion of the Board necessary or expedient for the purpose of enabling the rural sanitary authority to maintain, manage, or administer any property transferred to them under this Act, or for the purpose of enabling the rural sanitary authority to pay the debts mentioned in this Act, to be in force in that part of the rural district which consists of the lapsed urban district; and for the purposes aforesaid or either of them, may invest such rural authority, with reference to such lapsed urban district, with all or any of the powers, rights, duties, capacities, liabilities, and obligations of an urban authority under the Public Health (Ireland) Act, 1878, including all powers of making and levying any rate which the urban authority of such lapsed urban district might have made and levied, which shall be chargeable upon the same property, subject to the same exemptions and conditions, and payable by the same persons, as if it were a rate made and levied by the urban authority of such lapsed urban district; the Local Government Board may also invest the rural authority, so far as relates to the urban district, with all the powers of or relating to lighting conferred upon urban authorities by the Public Health (Ireland) Act, 1878, and the cost thereof shall be defrayed out of the rate authorised to be made under this Act, or out of any other moneys in the hands of the rural authority which would have been applicable to that purpose if they had been an urban authority.

The power of rating conferred by this Act shall extend to the raising of all sums which may be necessary for the payment of the debts of the urban authority, including all arrears due at the time such rate is made.

Such Order of the Local Government Board may be made by them from time to time, and may be revoked or amended by any subsequent order, and may contain all such conditions and provisions relative to the purposes aforesaid as the Local Government Board may think necessary.

3. If at any time the lapsed urban district is again constituted into an urban district, it shall be lawful for the Local Government Board, on the application of the urban authority of such district, to make an Order vesting in such urban authority the property transferred under this Act to the rural sanitary authority, subject to any charges or incumbrances affecting the same. In such Order the Local Government Board may make provision for the adjustment of accounts between such urban and rural authorities, for vesting in the urban authority the right to levy and recover rates made by the rural authority under this Act, and for such other things as the Local Government Board may deem necessary for carrying this section into effect.

4. In the case of towns in Ireland having as governing bodies the persons or any of them mentioned in section four of the Public Health (Ireland) Act, 1878, column two, and which have not become and are not the urban sanitary authority within the meaning of the same Act, such governing bodies shall have all the powers of borrowing conferred by section twenty-eight of the Local Government (Ireland) Act, 1871, and for the purposes of this section said section twenty-eight shall be deemed to be hereby re-enacted, and such powers of borrowing shall include the construction, maintenance, and repair of a town hall.

Nothing herein contained shall operate or extend to give to such governing bodies any powers of borrowing which, by the Public Health (Ireland) Act, 1878, are transferred to or vested in the sanitary authority for the time being. In the said section twenty-eight the Local Government Board for Ireland shall be substituted for the Chief Secretary.

5. Whereas the Towns Improvement (Ireland) Act, 1854, was in force in the town of Ennis, and a body of town commissioners was duly constituted under that Act:

And whereas the said Act ceased to be in force in Ennis, and the body of town commissioners became thereupon in law dissolved; but some members thereof continued in good faith, and through mistake of law, to act as commissioners after such dissolution.

And it is expedient to make the provisions contained in this section in relation thereto:

Therefore it is hereby enacted that all resolutions and proceedings of such persons, purporting to have been passed or taken by them as town commissioners, and all acts of the officers formerly in the service of the town commissioners done by them as such officers, shall be of the same validity and effect as if the town commissioners had not been dissolved, and shall, notwithstanding such dissolution, be ratified and confirmed:

And such persons and officers shall be re-

leased and indemnified from and against any action or penalty in consequence thereof.

6. This Act shall apply whether the dissolution or cesser of the urban authority has taken place before or after the passing of this Act.

CHAP. 78.

Corrupt Practices (Suspension of Elections) Act, 1884.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Suspension of power of Speaker to issue writ for elections in certain cities and boroughs.*

SCHEDULES.

An Act to suspend, on account of Corrupt Practices, the issue during the prorogation of Parliament of writs for the holding of an Election of a Member or Members to serve in the present Parliament for certain cities and boroughs. (14th August 1884.)

WHEREAS, in pursuance of addresses to Her Majesty from both Houses of Parliament in relation to the elections of members to serve in Parliament for the cities and boroughs mentioned in the First Schedule to this Act, commissioners were appointed by commissions, dated the ninth day of September one thousand eight hundred and eighty, for the purpose of making inquiry into the existence of corrupt practices at the elections of members to serve in Parliament for the said cities and boroughs:

And whereas the said commissioners have respectively reported as regards the existence of corrupt practices to the effect in the second column of the said schedule mentioned:

And whereas it is expedient that a writ for the election of a member or members to serve in the present Parliament for any of the said cities and boroughs should not be issued except by order of the House of Commons:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Corrupt Practices (Suspension of Elections) Act, 1884.

2. A writ for the election of a member or members to serve in Parliament for any of the cities or boroughs mentioned in the First Schedule to this Act shall not, until after the expiration of seven days after the first meeting of Parliament in the year one thousand eight hundred and eighty-five, be issued in pursuance of the Acts mentioned in the Second Schedule to this Act, or any of them.

FIRST SCHEDULE.

CITIES AND BOROUGHS REFERRED TO.

Name of City or Borough.	Report of Commissioners as to prevalence of Corrupt Practices.
Boston - - -	Corrupt practices prevailed very extensively at the election of 1880. . . . . It was stated as an undoubted fact that all elections, both parliamentary and municipal, have for a long time past been corrupt.
Canterbury - - -	Corrupt practices extensively prevailed at the elections of 1879 and 1880.
Chester - - -	Corrupt practices extensively prevailed at the general elections of February 1874 and of April 1880.

Name of City or Borough.	Report of Commissioners as to prevalence of Corrupt Practices.
Gloucester - - -	Corrupt practices extensively prevailed at the elections in February 1874 and March 1880.
Macclesfield - -	Corrupt practices extensively prevailed at the elections of 1865, 1868, 1874, and 1880.
Oxford - - -	Corrupt practices were committed at the election in February 1874, and corrupt practices extensively prevailed at the elections in March 1874, April 1880, and May 1880, by way of payment of money to voters as therein mentioned.
Sandwich - - -	In the election of May 1880, there was practised throughout the constituency, not only indirect bribery of various kinds, but direct bribery, the most extensive and systematic. . . . . Electoral corruption has long extensively prevailed in the borough.

SECOND SCHEDULE.

ACTS REFERRED TO.

Session and Chapter.	Title.
24 Geo. 3. Sess. 2. c. 26. -	An Act to repeal so much of two Acts made in the tenth and fifteenth years of the reign of His present Majesty as authorises the Speaker of the House of Commons to issue his warrant to the Clerk of the Crown for making out writs for the election of members to serve in Parliament in the manner therein mentioned and for substituting other provisions for the like purposes.
21 & 22 Vict. c. 110. -	Election of Members during Recess Act, 1858.
26 & 27 Vict. c. 20. -	An Act to further limit and define the time for proceeding to election during the recess.

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52. An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith 103

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56. An Act to declare the Law relating to the Incorporation of Chartered Companies - 135

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61. An Act to amend the Supreme Court of Judicature Acts; and for other purposes 139

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69. An Act to make better provision against Cholera and other dangerous Epidemic Diseases - - - - - 162

70. An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections - - - Page 162

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72. An Act for preventing the erection of Buildings on Disused Burial Grounds - 181

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78. An Act to suspend, on account of Corrupt Practices, the issue during the prorogation of Parliament of writs for the holding of an Election of a Member or Members to serve in the present Parliament for certain cities and boroughs - - - - 208

The Acts contained in the following List, being PUBLIC ACTS of a Local Character, are placed amongst the LOCAL AND PERSONAL ACTS.

i. An Act for legalizing Marriages heretofore solemnized in the District Church of Stopsley, in the Parish of Luton, in the County of Bedford.

ii. An Act to confirm a Scheme under the Metropolitan Commons Act, 1866, and the Metropolitan Commons (Amendment) Act, 1869, relating to Streatham Common.

iii. An Act to confirm a scheme under the City of Norwich Act, 1867, relating to Mousehold Heath, in the county of the city of Norwich.

iv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Bognor, Ealing, and Henley.

xii. An Act for legalizing Marriages heretofore solemnized in the Wood Green Congregational Church, in the district of Edmonton, in the county of Middlesex.

xiii. An Act to confirm an Order made by the Board of Trade under the Sea Fisheries Act, 1868, relating to Ramsholt.

xiv. An Act to confirm a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, transferring certain Rights, Powers, and Obligations under certain Provisional Orders to the Edison and Swan United Electric Light Company (Limited), and for other purposes.

xxxix. An Act for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Colwyn Bay and District Gas, Crays Gas, Fleetwood Gas, Frome Gas, and Hull Gas.

xl. An Act for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Dyke District Water, Hoddesdon Water, and Thirsk District Water.

xli. An Act to confirm certain Provisional Orders under the Land Drainage Act, 1861.

xlii. An Act to confirm a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bury Saint Edmund's.

xliii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Alton-Barnes, Barnstaple, Bishops Tawton, Buckland Brewer, Bulkworthy, Drewsteignton, East Knoyle, Frithelstock (two), Hittesleigh, Horningsham, Maiden-Bradley-with-Yarnfield, Newton-Saint-Petrock, Parkham, Pertwood, and Sutton-Veney; and to the Chapelry of Alton Priors.

xliv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Bovey-Tracey, Broadwood Kelly, Calverleigh, Colyton, Combe-in-Teignhead, Denbury, East Ogwell, Haccombe, Hennock, High Week, Ipplepen, Loxbear, Lustleigh, Monk Okehampton, Moreton-Hampstead, North Bovey, Southleigh, Stoke-in-Teignhead, Torbryan (two), and Woolborough.

xlv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashill, Beckington, Berkeley, Broadway, Brockley, Chelvey, Crewkerne, Cricket Malherby, Dinnington, Dowlish-Wake, Elm, Frome, Hawkridge, Ilton, Kilmersdon, Kingston, Knowle-Saint-Giles, Laverton, Marston-Biggott, Mells, Road, Seavington-Saint-Mary, Standerwick, Tellesford, Wayford, West Dowlish, Whatley, Whitelackington, Withypoole, and Woolverton.

xlvi. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Acton, Alphamstone, Assington, Belchamp-Otten, Belchamp-Walter, Boxted, Bulmer, Bures-Saint-Mary, Castlecamps, Cavendish, Chilton, Foxearth, Glemsford, Great Cornard, Great Henny, Great Waldingfield, Helion's-Bumpstead, Lamarsh, Linstead Parva, Liston, Little Cornard, Little Waldingfield, Long Melford, Mendham (two), Metfield, Middleton, Newton (near Sudbury), Redenhall with Harleston, Somerton, Stoke (near Nayland), Twinstead, and Withersdale, and to the Hamlet of Buers.

xlvii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashen, Bildeston, Boxford, Brockley, Brettenham, Carlton, Colne-Engain, Great Maplestead, Great Yeldam, Groton, Hitcham, Kelsale, Kettlebaston, Lindsey, Little Maplestead, Little Yeldam, Naughton, Nedging, Polstead, Preston, Ridgewell, Semer, Sible-Hedingham, Stambourne, Tilbury juxta Clare, Toppesfield, Wattesham, Whatfield, Whepstead, and White Colne.

xlviii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Abberley, Ashperton (two), Donnington, Holy Cross in Pershore, In-Liberties, Ledbury, Llangaran, Munsley (two), Norton juxta Kempsey, Putley (two), Rock, Saint

Andrew, Saint Andrew in Pershore, Saint Martin, Saint Nicholas, Saint Peter, Stoke Edith, Stretton-Grandsome or Grandison, Stoulton, Upper Bullingham, Weston-Beggard, Whitchurch, Woolhope, and Yarkhill, to the Chapelries of Westhide and Whittington, and to the Township of Grafton.

xlix. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Abergwilly, Bettws Bledrws, Carmarthen, Cole Orton, Kings Sutton, Llandewi Aberarth, Llangybi, Llanpumpsaint, Llansaintfraed, and Llannon, Llanvihangel, Abercowin, Mydrim, Newbottle, Newchurch, and Thringston, and to the Townships of Thelwall and Woolstone with Martinscroft.

l. An Act to confirm the Provisional Order for the Regulation of Redhill and Earlswood Commons, situate in the parishes of Reigate and Horley, in the county of Surrey, in pursuance of a Report of the Land Commissioners for England.

li. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Emsworth Gas, Hornsey Gas, Kirkburton Gas, Quorndon and Mountsorrel Gas, and Slough Gas.

lxxiii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Belchalwell, Blackford, Bruton, Butleigh, Charlton Horethorne, Charlton Musgrove, Fifehead Neville, Henstridge, Holton, Horsington, Marston, Magna, Milborne Port, North Brewham, North Cadbury, North Cheriton, Okeford Fitzpaine, Penselwood, Pitcombe, Queen Camel, Shepton-Montague, South Brewham, Stoke-Trister, Stowell, Walton, and Wincanton.

lxxiv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashen, Birdbrook, Brockdish, Haverhill, Hundon, Little Wratting, Ovington, Peasenhall, Sibton, Steeple Bumpstead, Stoke-by-Clare, Stratton-Long-Saint-Mary, Sturmer, Thorpe Abbotts, Tilbury-juxta-Clare, Wacton Magna, Whixoe, and Withersfield; and to the Townships of Emswell-with-Kelleythorpe, Eskdaleside, Great Driffield, Little Driffield, and Ugglebarnby.

lxxv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Charley (two), Eddlesborough, Helmdon, Ivinghoe, Little Gaddesden, Markfield, Marston Saint Lawrence (two), Middleton Cheney, Newtown Linford, Slapton, Syresham, Thenford, and Whitfield; to the Townships of Marnham and South Clifton; and to the Hamlet of Astwell-with-Falcutt.

lxxvi. An Act to confirm a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, relating to Saint James, Westminster, Saint Martin-in-the-Fields, and Saint George, Hanover Square.

lxxvii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of North Dublin, Kells, Kilmallock, Mitchelstown, Rathdrum, Tralee, Trim, and Tulla.

lxxviii. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Bandon.

lxxix. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Alperton and Sudbury Water, Market Weighton Water, Newmarket Water, and Wisbech Water.

lxxx. An Act to confirm certain Provisional Orders made by the Board of Trade under "The Tramways Act, 1870," relating to Leicester Tramways (Extensions), Walsall and District Tramways, and Wigan Tramways.

lxxxi. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the county of Montgomery.

lxxxii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Barnwood, Brockthrop (two), Churchdown, Down Hatherly, Harescomb (two), Haresfield (two), Hempstead, Maismore, Matson, North Hamlet, Quedgley (two), Saint Catherine's with Kingsholm Saint Catherine's, Saint John Baptist, Saint Mary-de-Lode

with Kingsholm Saint Mary, Saint Nicholas, Sandhurst, South Hamlet, Upton Saint Leonard's, Ville of Wotton, and Whaddon (two); to the Township of Over Higham and Linton, and to the Hamlets of Barton Saint Mary, Barton Saint Michael, Longford Saint Catherine's, Longford Saint Mary, Tuffley, Twigworth, and Wootton Saint Mary.

lxxxiii. An Act to confirm certain Provisional Orders of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, as amended by the Poor Law Amendment Act, 1868, and extended by the Poor Law Act, 1879, relating to the City of Oxford and the Parish of Saint Mary, Whitechapel.

lxxxiv. An Act to confirm a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, relating to the Fulham District.

lxxxv. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to new Streets in the City of Dublin, and to the Town of Dungarvan, and to Waterworks in Buncrana.

cii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Colchester Tramways, Gravesend, Rosherville, and Northfleet Tramways (Extension), Hartlepools Tramways (Extension), Stockton-on-Tees Tramways (Extension), and Weymouth Tramways.

ciii. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

civ. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Dundalk.

cv. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the Naas Burial Ground and the Town of Thurles.

cvi. An Act to confirm a Provisional Order of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Carrick-on-Suir Union.

cvii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Barrow-in-Furness Tramways, North Birmingham Tramways, and South Birmingham Tramways.

cviii. An Act to confirm a Provisional Order made under the Artizans and Labourers Dwellings Improvement (Scotland) Acts, 1875 and 1880, relating to the improvement of the Burgh of Aberdeen.

cix. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the Burgh of Kirkintilloch.

cx. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Cashel, Clogheen, Navan, and Tipperary.

cxi. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Delvin, Fermoy, and Newcastle.

cxii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Aston Tramways, Blackpool Tramways, Bootle-cum-Linacre Corporation Tramways, Cardiff Tramways (Extensions), Dudley, Sedgley, and Wolverhampton Tramways, Liverpool Corporation Tramways (Extensions), and Nottingham Tramways.

cxiii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Bisley, Bratton Clovelly, Broadwood Widger, Chittlehampton, Cranham, East Worlington (two), Haresfield, Hay, Lapford, Llowes, Meshaw, Miserdine, Randwick (two), Standish, Stonehouse, Thelbridge, West Worlington, Witheridge (two), and Woolfardisworthy.

cxiv. An Act to confirm an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Dawlish and Kenton.

cxv. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, as amended by the Poor Law Amendment Act, 1868, and extended by the Poor Law Act, 1879, relating to the Parish of Saint Luke (Middlesex).

cxvi. An Act to confirm a Provisional Order of the Local Government Board for Ireland

under the Labourers (Ireland) Act, 1883, relating to the Nenagh Union.

cliv. An Act to confirm a Provisional Order of the Local Government Board for Ireland under the Labourers Act, 1883, relating to the Tipperary Union.

clv. An Act to amend certain provisions of the Acts third and fourth Victoria, chapter one hundred and thirteen, and thirty-second and thirty-third Victoria, chapter ninety-four, in relation to the Consolidation of Benefices called "Medieties," or "Portions," and to extend the same to the parish of Tiverton, in the county of Devon.

clvi. An Act to confirm Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Enniscorthy, Clonakilty, Gorey, Killadysert, and Shillelagh.

clvii. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Alkali, &c. Works Regulation Act, 1861, relating to Salt Works.

clviii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Dorking and Hendon, the Rural Sanitary District of the Kingston Union, the Local Government District of Malvern, the Borough of Portsmouth, the City of Truro, and the Local Government Districts of Wimbledon and Ystradyfodwg.

clix. An Act to provide for ascertaining any Rights of Common or other rights in or over Strensall Common, in the North Riding of the county of York, and for the acquisition and compensation of such rights, and the use of the said Common and adjoining land for military and other purposes.

clx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Arlecdon and Frizington, the Borough of Bradford (Yorks), the Falmouth United Sewerage District, the Special Drainage District of Flaxley, the Local Government Districts of Holmfirth and Lindfield, the Borough of Over Darwen, the Local Government Districts of Rothwell and Saint Mary Church, and the Warwick Joint Hospital District.

clxi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the City and County of Bristol, the Cities of Carlisle and Coventry, the Local Government District of Northwich, the Borough of Preston, the Rural Sanitary District of the Taunton Union, and the Borough of Warrington.

clxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Bournemouth, the Special Drainage District of Clacton-on-Sea, the Local Government District of Farnham, the Boroughs of Hythe and Margate, the Improvement Act Districts of Milton-next-Sittingbourne and West Worthing, and the City of Winchester.

clxiii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Clonmel, Croom, Glin, Kanturk, Limerick, Lismore, Macroom, Mullingar, Rathkeale, and Wexford.

clxiv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Accrington and Church Outfall Sewerage District, the Boroughs of Bangor, Barnsley, and Burnley, the Local Government District of Fulwood, the City of Liverpool, the Local Government District of Llanelly, the Borough of Middlesbrough, the Improvement Act District of Milford, and the Borough of Nottingham.

clxv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Aberavon, the Local Government Districts of Brighouse, and Denton and Haughton, the City of Manchester, and the Local Government Districts of Shipley, Skelton and Brotton, Sowerby Bridge, and Sutton in Ashfield.

clxvi. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Aldborough, Baltimore and Skibbereen, Carlingford Lough, Chatham, Cromer, Cullen, Dawlish, Eyemouth, Fraserburgh, Hove, and Newlyn.

clxvii. An Act to confirm a Provisional Order of the Lord Lieutenant and Privy Council in Ireland relating to the West Clare Railway.

clxviii. An Act to confirm a Provisional Order of the Lord Lieutenant and Privy Council in Ireland relating to the Clogher Valley Tramway.

clxix. An Act to confirm a Provisional Order made by the Scotch Education Department under the Education (Scotland) Act, 1878, to enable the School Board for Ardchattan and Muckairn, in the county of Argyll, to put in force the Lands Clauses Consolidation (Scotland) Act, 1845, and the Acts amending the same.

clxx. An Act to confirm a Provisional Order of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Drogheda Union.

LIST OF THE LOCAL AND PRIVATE ACTS.

LOCAL ACTS.

The Titles to which the Letter P. *is prefixed are Public Acts of a Local Character.*

P. i. An Act for legalizing Marriages heretofore solemnized in the District Church of Stopsley, in the Parish of Luton, in the County of Bedford.

P. ii. An Act to confirm a Scheme under the Metropolitan Commons Act, 1866, and the Metropolitan Commons (Amendment) Act, 1869, relating to Streatham Common.

P. iii. An Act to confirm a Scheme under the City of Norwich Act, 1867, relating to Mousehold Heath, in the county of the city of Norwich.

P. iv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Bognor, Ealing, and Henley.

v. An Act for enabling the President and Fellows of Sion College within the City of London to acquire a new site for the buildings of the said College from the Mayor Commonalty and Citizens of the City of London; and for other purposes.

vi. An Act to amend the Railway Clearing System Superannuation Fund Association Act 1873; and for other purposes.

vii. An Act to amend the Acts relating to Haddenham Level and to provide for the making and maintaining of Roads in the said Level and for other purposes.

viii. An Act to extend the period limited by the Belfast Strandtown and High Holywood Railway Act 1881 for the compulsory purchase of lands and for other purposes.

ix. An Act for rendering valid certain Letters Patent granted to George Francis Bradbury and Henry Lomax for Improvements in Sewing Machines.

x. An Act to authorise the Trustees of the Clyde Lighthouses to raise an additional sum of money, and for other purposes.

xi. An Act for rendering valid certain Letters Patent granted to Alfred Julius Boult of 323 High Holborn in the County of Middlesex for Improvements in the method and means of removing Dust from Carpets.

P. xii. An Act for legalizing Marriages heretofore solemnized in the Wood Green Congregational Church, in the district of Edmonton, in the county of Middlesex.

P. xiii. An Act to confirm an Order made by the Board of Trade under the Sea Fisheries Act, 1868, relating to Ramsholt.

P. xiv. An Act to confirm a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, transferring certain Rights, Powers, and Obligations under certain Provisional Orders to the Edison and Swan United Electric Light Company (Limited), and for other purposes.

xv. An Act to enable the London and Saint Katharine Docks Company to make a new entrance to their Royal Albert Dock; and for other purposes.

xvi. An Act to confer further powers on the Trustees of the Port and Harbours of Greenock in relation to their Harbours and Docks; and for other purposes.

xvii. An Act for incorporating and conferring powers on the Rickmansworth Waterworks Company.

xviii. An Act for confirming certain Leases granted by the Governors of the London Hospital and for enabling them to grant building and other Leases of their Estates and for enlarging their Powers with respect to the reception of Patients and for other purposes.

xix. An Act to authorise the West Lancashire Railway Company to borrow Money for the payment of Debts.

xx. An Act to authorise the construction of the Ayr and District Tramways, in the county of Ayr; and for other purposes.

xxi. An Act for the winding-up of the affairs and the dissolution of the Highgate Archway Company.

xxii. An Act to enable the Commissioners for Public Baths and Washhouses in the parish of Saint Mary Abbotts Kensington to acquire otherwise than by agreement certain Lands in the said parish and for other purposes.

xxiii. An Act to alter the Memorandum of Association of the Scottish Imperial Insurance Company; and for other purposes.

xxiv. An Act to amend the Act incorporating the Scottish Provident Institution, and the Deed of Constitution and Laws and Regulations of the Institution; to confer further powers on the Institution; and for other purposes.

xxv. An Act to confer further powers on the Corporation of Glasgow in relation to their Markets and Slaughter-houses Undertaking; and to enable the Corporation to construct additional Tramways; to borrow further money; and for other purposes.

xxvi. An Act to confer further powers upon the Great Northern Railway Company with respect to their own and other undertakings and for other purposes.

xxvii. An Act to extend the borough of Longton and for other purposes.

xxviii. An Act to extend the time for completing an embankment and other works in connexion with the Reclamation of certain Lands in Morecambe Bay in the county of Lancaster and for other purposes.

xxix. An Act to sanction the purchase by the Mersey Docks and Harbour Board of certain Lands and to confirm an agreement between the Board and the Earl of Sefton and to amend in certain respects the Acts relating to the Board.

xxx. An Act to amend the Dublin (South) City Market Acts 1876 to 1883 and for other purposes.

xxxi. An Act for the abandonment of the Upwell Outwell and Wisbech Railway.

xxxii. An Act to enable the Corporation of Leicester to consolidate their Loans, and convert the same into Stock and to make further provision for the improvement and good government of the borough; and for other purposes.

xxxiii. An Act to authorise the construction of a tidal harbour dock and other works at Sutton-le-Marsh in the county of Lincoln; and for other purposes.

xxxiv. An Act for the abandonment of the Railways authorised by the Severn Bridge and Forest of Dean Central Railway Act 1873 and the Severn Bridge and Forest of Dean Central Railway Act 1876 and for other purposes.

xxxv. An Act to make further provision with respect to the payment of the cost of the Bridge across the River of Ayr within the Burgh of Ayr; and for other purposes.

xxxvi. An Act for authorising the Ayr Harbour Trustees to borrow additional money; and for other purposes.

xxxvii. An Act to authorise the Belfast Central Railway Company to deviate part and to abandon other parts of their authorised Western Extensions and to extend the periods limited for the purchase of lands for and for the completion of the remainder of those Extensions and for other purposes.

xxxviii. An Act to provide for the effectual maintenance of the Navigation of the River Trent from Wilden Ferry in the counties of Derby and Leicester or one of them to Gainsborough in the county of Lincoln.

P. xxxix. An Act for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Colwyn Bay and District Gas, Crays Gas, Fleetwood Gas, Frome Gas, and Hull Gas.

P. xl. An Act for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Dyke District Water, Hoddesdon Water, and Thirsk District Water.

P. xli. An Act to confirm certain Provisional Orders under the Land Drainage Act, 1861.

P. xlii. An Act to confirm a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, relating to Bury Saint Edmund's.

P. xliii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Alton-Barnes, Barnstaple, Bishops Tawton, Buckland-Brewer, Bulkworthy, Drewsteignton, East Knoyle, Frithelstock (two), Hittesleigh, Horningsham, Maiden-Bradley-with-Yarnfield, Newton-Saint-Petrock, Parkham, Pertwood, and Sutton-Veney; and to the Chapelry of Alton Priors.

P. xliv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Bovey-Tracey, Broadwood Kelly, Calverleigh, Colyton, Combe-in-Teignhead, Denbury, East Ogwell, Haccombe, Hennock, High Week, Ipplepen, Loxbear, Lustleigh, Monk Okehampton, Moreton-Hampstead,

North Bovey, Southleigh, Stoke-in-Teignhead, Torbryan (two), and Woolborough.

P. xlv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashill, Beckington, Berkeley, Broadway, Brockley, Chelvey, Crewkerne, Cricket Malherby, Dinnington, Dowlish-Wake, Elm, Frome, Hawkridge, Ilton, Kilmersdon, Kingston, Knowle-Saint-Giles, Laverton, Marston-Biggott, Mells, Road, Seavington-Saint-Mary, Standerwick, Tellesford, Wayford, West Dowlish, Whatley, Whitelackington, Withypoole, and Woolverton.

P. xlvi. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Acton, Alphamstone, Assington, Belchamp-Otten, Belchamp-Walter, Boxted, Bulmer, Bures-Saint-Mary, Castlecamps, Cavendish, Chilton, Foxearth, Glemsford, Great Cornard, Great Henny, Great Waldingfield, Helion's-Bumpstead, Lamarsh, Linstead Parva, Liston, Little Cornard, Little Waldingfield, Long Melford, Mendham (two), Metfield, Middleton, Newton (near Sudbury), Redeuhall with Harleston, Somerton, Stoke (near Nayland), Twinstead, and Withersdale, and to the Hamlet of Buers.

P. xlvii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashen, Bildeston, Boxford, Brockley, Brettenham, Carlton, Colne-Engain, Great Maplestead, Great Yeldam, Groton, Hitcham, Kelsale, Kettlebaston, Lindsey, Little Maplestead, Little Yeldam, Naughton, Nedging, Polstead, Preston, Ridgewell, Semer, Sible-Hedingham, Stambourne, Tilbury juxta Clare, Toppesfield, Wattesham, Whatfield, Whepstead, and White Colne.

P. xlviii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Abberley, Ashperton (two), Donnington, Holy Cross in Pershore, In-Liberties, Ledbury, Llangaran, Munsley (two), Norton juxta Kempsey, Putley (two), Rock, Saint Andrew, Saint Andrew in Pershore, Saint Martin, Saint Nicholas, Saint Peter, Stoke Edith, Stretton-Grandsome or Grandison, Stoulton, Upper Bullingham, Weston-Beggard, Whitchurch, Woolhope, and Yarkhill, to the Chapelries of Westhide and Whittington, and to the Township of Grafton.

P. xlix. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Abergwilly, Bettws Bledrws, Carmarthen, Cole Orton, Kings Sutton, Llandewi Aberarth, Llangybi, Llanpumpsaint, Llansaintfraed and Llannon, Llanvihangel Abercowin, Mydrim, Newbottle, Newchurch, and Thringston, and to the Townships of Thelwall and Woolstone with Martinscroft.

P. l. An Act to confirm the Provisional Order for the Regulation of Redhill and Earlswood Commons, situate in the parishes of Reigate and Horley, in the county of Surrey, in pursuance of a Report of the Land Commissioners for England.

P. li. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Emsworth Gas, Hornsey Gas, Kirkburton Gas, Quorndon and Mountsorrel Gas, and Slough Gas.

lii. An Act for incorporating the West Cheshire Water Company and conferring powers on them with reference to the Construction of Works and the Supply of Water and otherwise and for other purposes.

liii. An Act to dissolve and re-incorporate the Plympton and District Waterworks Company (Limited) and for other purposes.

liv. An Act for the granting of further Powers to the Walker and Wallsend Union Gas Company.

lv. An Act for the abandonment of the Totnes Paignton and Torquay Direct Railway.

lvi. An Act for authorising the Corporation of the Borough of Birkenhead to execute certain Street Improvements; for better regulating the erection of new buildings in the Borough; for amending certain local Acts, and making further police and sanitary regulations, and for other purposes.

lvii. An Act to amend the London Tramways Company (Limited) Capital Act 1880 and for other purposes.

lviii. An Act for enabling the North-eastern Railway Company to make a new Railway and to acquire additional Lands and for other purposes.

lix. An Act to enable the Corporation of Southampton to enlarge their Cemetery; and for other purposes.

lx. An Act for empowering the mayor aldermen and burgesses of the borough of Kingston-upon-Hull to make better provision for the supply of Water to their borough and other parts of their district of supply and to supply Water to the Cottingham Local Board; and for other purposes.

lxi. An Act for enabling the Local Board for the district of West Ham, in the county of Essex, to free the North Woolwich or Victoria Dock Road and Liliput Road from toll, and to purchase lands, and to construct certain works, and for granting additional powers to the said Local Board and for other purposes.

lxii. An Act to confer further powers upon the King's Lynn Dock Company; and for other purposes.

lxiii. An Act to amend the Nar Valley Drainage Act 1881 and to empower the Nar Valley Drainage Board to raise further money by borrowing.

lxiv. An Act to amalgamate the Undertakings of the Swindon Marlborough and Andover and the Swindon and Cheltenham Extension Railway Companies; and for other purposes.

lxv. An Act to remove doubts respecting certain provisions in the Deed of Settlement of the Star Life Assurance Society, and respecting the participation in profits by holders of certain policies of the Society; and for other purposes.

lxvi. An Act for empowering the Imperial Continental Gas Association to raise further Capital and for other purposes.

lxvii. An Act to revive the powers and extend the periods for the compulsory purchase of Lands and for the construction of the Railway authorised by the Henley-in-Arden and Great Western Junction Railway Act 1873 and for other purposes.

lxviii. An Act to confer further Powers on the Swindon and Cheltenham Extension Railway Company; and for other purposes.

lxix. An Act for carrying into effect the purchase of the Windsor and Eton Waterworks by the Mayor Aldermen and Burgesses of the borough of New Windsor and for other purposes.

lxx. An Act for the abandonment of the Ruthin and Cerrig-y-druidion Railway and for other purposes.

lxxi. An Act to authorise the Hull Barnsley and West Riding Junction Railway and Dock Company to construct new Railways and other Works to amend the Acts relating to the Company and for other purposes.

lxxii. An Act to extend the District to enlarge the Powers and to change the name of the Wharves and Warehouses Steam Power and Hydraulic Pressure Company; and for other purposes.

P. lxxiii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Belchalwell, Blackford, Bruton, Butleigh, Charlton Horethorne, Charlton Musgrove, Fifehead Neville, Henstridge, Holton, Horsington, Marston Magna, Milborne Port, North Brewham, North Cadbury, North Cheriton, Okeford Fitzpaine, Penselwood, Pitcombe, Queen Camel, Shepton-Montague, South Brewham, Stoke-Trister, Stowell, Walton, and Wincanton.

P. lxxiv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashen, Birdbrook, Brockdish, Haverhill, Hundon, Little Wratting, Ovington, Peasenhall, Sibton, Steeple Bumpstead, Stoke-by-Clare, Stratton-Long-Saint-Mary, Sturmer, Thorpe Abbotts, Tilbury-juxta-Clare, Wacton Magna, Whixoe, and Withersfield; and to the Townships of Emswell-with-Kelleythorpe, Eskdaleside, Great Driffield, Little Driffield, and Ugglebarnby.

P. lxxv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Charley (two), Eddlesborough, Helmdon, Ivinghoe, Little Gaddesden, Markfield, Marston Saint Lawrence (two), Middleton Cheney, Newtown Linford, Slapton, Syresham, Thenford, and Whitfield; to the Townships of Marnham and South Clifton; and to the Hamlet of Astwell-with-Falcutt.

P. lxxvi. An Act to confirm a Provisional Order made by the Board of Trade under

the Electric Lighting Act, 1882, relating to Saint James, Westminster, Saint Martin-in-the-Fields, and Saint George, Hanover Square.

P. lxxvii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of North Dublin, Kells, Kilmallock, Mitchelstown, Rathdrum, Tralee, Trim, and Tulla.

P. lxxviii. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Bandon.

P. lxxix. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Alperton and Sudbury Water, Market Weighton Water, Newmarket Water, and Wisbech Water.

P. lxxx. An Act to confirm certain Provisional Orders made by the Board of Trade under "The Tramways Act, 1870," relating to Leicester Tramways (Extensions), Walsall and District Tramways, and Wigan Tramways.

P. lxxxi. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the County of Montgomery.

P. lxxxii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Barnwood, Brockthrop (two), Churchdown, Down Hatherly, Harescomb (two), Haresfield (two), Hempstead, Maismore, Matson, North Hamlet, Quedgley (two), Saint Catherine's with Kingsholm Saint Catherine's, Saint John Baptist, Saint Mary-de-Lode with Kingsholm Saint Mary, Saint Nicholas, Sandhurst, South Hamlet, Upton Saint Leonard's, Ville of Wotton, and Whaddon (two); to the Township of Over Higham and Linton, and to the Hamlets of Barton Saint Mary, Barton Saint Michael, Longford Saint Catherine's Longford Saint Mary, Tuffley, Twigworth, and Wootton Saint Mary.

P. lxxxiii. An Act to confirm certain Provisional Orders of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, as amended by the Poor Law Amendment Act, 1868, and extended by the Poor Law Act, 1879, relating to the City of Oxford and the Parish of Saint Mary, Whitechapel.

P. lxxxiv. An Act to confirm a Provisional Order made by the Board of Trade under the Electric Lighting Act, 1882, relating to the Fulham District.

P. lxxxv. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to new Streets in the City of Dublin, and to the Town of Dungarvan, and to Waterworks in Buncrana.

lxxxvi. An Act for incorporating and conferring powers on the Sandbach Gas Company.

lxxxvii. An Act for enlarging and improving the Court House and for erecting public buildings at Hamilton and for other purposes.

lxxxviii. An Act to authorise the construction of a bridge over certain railways near the western end of Cromwell Road Kensington with roads and approaches in connexion therewith.

lxxxix. An Act to make provision with reference to the Arrears of Dividend on the Preference Shares in the Capital of the Buenos Ayres and Ensenada Port Railway Company Limited; and for other purposes.

xc. An Act to enable the Stalybridge Gas Company to purchase additional Land and to raise further Capital and for other purposes.

xci. An Act to authorise the Trustees of the Clyde Navigation to construct Quay or Wharfs and other Works, and to acquire Lands in connexion with their undertaking, and to borrow Money; and for other purposes.

xcii. An Act to make further Provisions respecting the Capital of the Limerick and Kerry Railway Company and for other purposes.

xciii. An Act to authorise the Construction of New Streets and other Works in the Borough of Belfast and to make further Provision for the Improvement and Government of the Borough and for other purposes.

xciv. An Act to authorise the London Street Tramways Company to construct additional Tramways and for other purposes.

xcv. An Act to further amend the Metropolitan District Railway Act, 1881; and for other purposes in relation thereto.

xcvi. An Act to confer further Powers on the Eastern and Midlands Railway Company.

xcvii. An Act to confer further Powers on the London Brighton and South Coast Railway Company; to transfer to them the powers of the Oxted and Groombridge Railway Company; and for other purposes.

xcviii. An Act to confer additional Powers upon the Midland Railway Company for the construction of Railways and other Works and the Acquisition of Lands and for raising further Capital; and upon that Company and the Great Western Railway Company jointly in respect of a portion of the Railway of the Bristol Port Railway and Pier Company: and for other purposes.

xcix. An Act for empowering the Scarborough and Whitby Railway Company to raise additional capital and for other purposes.

c. An Act to authorise the West Metropolitan Tramways Company to raise additional capital and for other purposes.

ci. An Act for defining or extending the powers of the India Rubber, Gutta Percha, and Telegraph Works Company, Limited, and for other purposes.

P. cii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Colchester Tramways, Gravesend, Rosherville, and Northfleet Tramways (Extension), Hartlepools Tramways (Extension), Stockton-on-Tees Tramways (Extension), and Weymouth Tramways.

P. ciii. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

P. civ. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Dundalk.

P. cv. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the Naas Burial Ground and the Town of Thurles.

P. cvi. An Act to confirm a Provisional Order of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Carrick-on-Suir Union.

P. cvii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Barrow-in-Furness Tramways, North Birmingham Tramways, and South Birmingham Tramways.

P. cviii. An Act to confirm a Provisional Order made under the Artizans and Labourers Dwellings Improvement (Scotland) Acts, 1875 and 1880, relating to the improvement of the Burgh of Aberdeen.

P. cix. An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the Burgh of Kirkintilloch.

P. cx. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Cashel, Clogheen, Navan, and Tipperary.

P. cxi. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Delvin, Fermoy, and Newcastle.

P. cxii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Aston Tramways, Blackpool Tramways, Bootle-cum-Linacre Corporation Tramways, Cardiff Tramways (Extensions), Dudley, Sedgley, and Wolverhampton Tramways, Liverpool Corporation Tramways (Extensions), and Nottingham Tramways.

P. cxiii. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Bisley, Bratton Clovelly, Broadwood Widger, Chittlehampton, Cranham, East Worlington (two), Haresfield, Hay, Lapford, Llowes, Meshaw, Miserdine, Randwick (two), Standish, Stonehouse, Thelbridge, West Worlington, Witheridge (two), and Woolfardisworthy.

P. cxiv. An Act to confirm an Order of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Dawlish and Kenton.

P. cxv. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Poor Law Amendment Act, 1867, as amended by the Poor Law Amendment Act, 1868, and extended by the Poor Law Act, 1879, relating to the Parish of Saint Luke (Middlesex).

P. cxvi. An Act to confirm a Provisional Order of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Nenagh Union.

cxvii. An Act to authorise the Construction of additional Water Works at Swanage in the county of Dorset and for other purposes.

cxviii. An Act to empower the Local Board for the District of the Town of Ventnor in the Isle of Wight to construct a Pier and to acquire Lands for Street Improvements and other purposes: and to confer further powers upon the said Local Board: and for other purposes.

cxix. An Act for the permanent Establishment Regulation and Management of the Butter Market of the City of Cork and for other purposes.

cxx. An Act to transfer to the Belfast and County Down Railway Company the Belfast Holywood and Bangor Railway; and for other purposes.

cxxi. An Act for incorporating and conferring Powers upon the Liverpool Hydraulic Power Company and for other purposes.

cxxii. An Act for incorporating and conferring powers upon the Newport (Monmouthshire) Hydraulic Power Company and for other purposes.

cxxiii. An Act to provide for the consolidation of the Loans of the Corporation of Rochdale and the conversion of those Loans into Stock; and to alter the Charges made by the Corporation for a supply of Water; and for other purposes.

cxxiv. An Act to extend the periods for the compulsory purchase of lands for and for the completion of the railways authorised by the Ballyclare Ligoniel and Belfast Junction Railway Act 1881 and for other purposes.

cxxv. An Act to empower the Belfast Street Tramways Company to construct additional Tramways to raise further money and for other purposes.

cxxvi. An Act for enabling the Great Southern and Western Railway Company to extend their railway to Tullow in the county of Carlow; and for other purposes.

cxxvii. An Act to extend the time limited by the Clonakilty Extension Railway Act 1881 for the purchase of Lands and the completion of the Railway by that Act authorised; to authorise the Cork and Bandon Railway Company to subscribe towards the construction of such Railway and to convert certain debenture shares into debenture stock; and for other purposes.

cxxviii. An Act to authorise the Belfast and Northern Counties Railway Company to construct Tramways from Broughshane to Clonetrace and from Retreat to Cushendall; to vest the Undertaking of the Ballymena Cushendall and Redbay Railway Company in the Belfast and Northern Counties Railway Company; to authorise that Company to purchase Hotels and to make agreements with the Belfast Harbour Commissioners and the Londonderry Port and Harbour Commissioners; and for other purposes.

cxxix. An Act for enabling the Caledonian Railway Company to construct certain Railways and other Works in the counties of Renfrew, Forfar, Stirling, and Clackmannan, to acquire and complete the Alloa Railway, and to take in lease the Moffat Railway; for extending the time for completing the Alloa Railway; for dissolving the Alloa Railway Company; for abandoning the Larbert and Grangemouth Connecting Lines of the Caledonian Railway Company, and confirming an agreement between that Company and the North British Railway Company with respect to the use of the Stirlingshire Midland Junction and Grangemouth Railways and other matters; and for other purposes.

cxxx. An Act for making the Railway and Canal Traffic Acts applicable to the City of Dublin Steam Packet Company in relation to their Holyhead and Kingstown Mail Contract Service; and for other purposes.

cxxxi. An Act to authorise the Corporation of the City of Coventry to purchase the undertaking of the Coventry Gas Company; and to confer further powers on the Corporation.

cxxxii. An Act for conferring further powers upon the Lancashire and Yorkshire Railway Company and the London and North Western Railway Company in respect of their Preston and Wyre Railway and for other purposes.

cxxxiii. An Act to provide for the Commutation of the Liability of Landowners in the Levels of the Hundreds of Caldicot and Wentlooge in the County of Monmouth to maintain Seawalls and other Works and to provide for the making and maintaining of Roads in the said Levels and for other Purposes.

cxxxiv. An Act to extend the powers of the Corporation of the Borough of Jarrow in the County of Durham with respect to the local government and improvement of the Borough; to extend the boundary of the Borough; and for other purposes.

cxxxv. An Act to confer further powers on the London Tilbury and Southend Railway Company.

cxxxvi. An Act for the granting of further powers to the Woolwich Equitable Gas Company.

cxxxvii. An Act to extend the periods respectively limited for the construction of the

Cranbrook and Paddock Wood Railway and for the compulsory purchase of lands required for the said railway and the deviations thereof.

cxxxviii. An Act to confer further powers on the Newry Navigation Company and for other purposes.

cxxxix. An Act to authorise the Treferig Valley Railway Company to lease their Railway to the Taff Vale Railway Company and for other purposes.

cxl. An Act for dissolving the Abercarn and Newbridge Gas and Water Company Limited and re-incorporating the Members thereof with others and for enabling them to supply Gas and Water in the parishes of Mynyddyslwyn and Llanhilleth in the county of Monmouth and for other purposes.

cxli. An Act for making further provision for the better government and for the preservation of the Health of the Inhabitants of the borough of Croydon to authorise the creation of Corporation Stock and for other purposes.

cxlii. An Act to provide for the working and rental of the East London Railway Whitechapel Junction and for other purposes.

cxliii. An Act to authorise the Great Southern and Western Railway Company to make a railway in substitution for a portion of the existing Cork and Youghal and Great Southern and Western Junction Railway; to remove and replace a certain bridge; to divert and stop up certain roads; to acquire additional lands; and for other purposes.

cxliv. An Act to authorise the Cork and Kenmare Railway Company to construct a branch railway from Loo Bridge to Headfort in the County of Kerry to abandon so much of the railway authorised by the Cork and Kenmare Railway Act 1881 as lies between Macroom and Loo Bridge to reduce the Company's capital and borrowing powers to alter baronial guarantees and for other purposes.

cxlv. An Act for conferring further powers on the Lancashire and Yorkshire Railway Company with relation to their own undertaking and undertakings in which they are jointly interested and for other purposes.

cxlvi. An Act to authorise the Manchester Sheffield and Lincolnshire Railway Company to construct a new Railway and other works and to confer further powers upon that Company in connection with their undertaking and for other purposes.

cxlvii. An Act for making Tramways in the Parishes of Greenwich Lewisham and St. Paul Deptford in the County of Kent; and for other purposes.

cxlviii. An Act to authorise the London Chatham and Dover Railway Company to construct railways and works in the counties of Surrey and Kent and in the city of London and for other purposes.

cxlix. An Act for extending the Limits of Jurisdiction of the Tees Conservancy Commissioners; for conferring further powers on the Commissioners; for amending the Tees Conservancy Acts; and for other purposes.

cl. An Act for regulating the Society of Solicitors before the Courts of the Commissary the Sheriff and City of Edinburgh commonly called the Society of Solicitors at Law for making provision for the present and contingent liabilities thereof for the distribution of the Funds and the ultimate dissolution of the Society and for other relative purposes.

cli. An Act for reincorporating and conferring powers on the Llanfairfechan Waterworks Company Limited.

clii. An Act to empower the Llanfrechfa Upper Local Board to make Waterworks and supply Water; and for other purposes.

cliii. An Act to confer further powers on the Teign Valley Railway Company.

P. cliv. An Act to confirm a Provisional Order of the Local Government Board for Ireland under the Labourers Act, 1883, relating to the Tipperary Union.

P. clv. An Act to amend certain provisions of the Acts third and fourth Victoria, chapter one hundred and thirteen, and thirty-second and thirty-third Victoria, chapter ninety-four, in relation to the Consolidation of Benefices called "Medieties," or "Portions," and to extend the same to the parish of Tiverton, in the county of Devon.

P. clvi. An Act to confirm Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Enniscorthy, Clonakilty, Gorey, Killadysert, and Shillelagh.

P. clvii. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Alkali, &c. Works Regulation Act, 1881, relating to Salt Works.

P. clviii. An Act to confirm certain Provisional Orders of the Local Government

Board relating to the Local Government Districts of Dorking and Hendon, the Rural Sanitary District of the Kingston Union, the Local Government District of Malvern, the Borough of Portsmouth, the City of Truro, and the Local Government Districts of Wimbledon and Ystradyfodwg.

clix. An Act to revive the powers and extend the periods for the compulsory purchase of lands and for the construction of the works authorised by the Walton-on-the-Naze and Frinton Improvement Act 1879 and for other purposes.

clx. An Act for the sale of the Gravesend Town Quay and Pier to the London Tilbury and Southend Railway Company: and for other purposes.

clxi. An Act to authorise the Undertakers of the Navigation of the Rivers Aire and Calder in the west riding of the county of York to deepen and improve the lower Navigation of the River Ouse and for other purposes.

clxii. An Act to make better provision for the Health Local Government and Improvement of the Local Board District of West Derby in the County of Lancaster and for other purposes.

clxiii. An Act for enabling the Caledonian Railway Company to make a Railway to Gourock, with a quay or pier there, and to connect their railways with the Paisley Canal Line of the Glasgow and South Western Railway Company, with facilities over that Line; for extending the time for the sale of certain superfluous Lands; and for other purposes.

clxiv. An Act for incorporating and conferring Powers on the Manchester Bury Rochdale and Oldham Steam Tramways Company.

clxv. An Act to authorise the Manchester Sheffield and Lincolnshire Railway Company to construct a Branch Railway from the Railway of the Cheshire Lines Committee at Chester to Connah's Quay and for other purposes.

clxvi. An Act for making tramways in the county of Kent and for other purposes.

clxvii. An Act to authorise the Construction of a Subway under the River Thames from King William Street in the City of London to Short Street in the Parish of St. Mary Newington in the County of Surrey and for other purposes.

clxviii. An Act for empowering the North Metropolitan Tramways Company to construct New Tramways; and for other purposes.

clxix. An Act to confer further powers on the Perth General Station Committee; and for other purposes.

clxx. An Act for authorising the Construction of Railways in the county of Lincoln to be called the Sutton and Willoughby Railway and for other purposes.

clxxi. An Act to extend the time for the compulsory purchase of lands for and for the completion of the railways authorised by the Burry Port and North Western Junction Railway Act 1876 and the Burry Port and North Western Junction Railway Amendment Act 1881 and for other purposes.

clxxii. An Act for incorporating the Dundee Suburban Railway Company and for other purposes.

clxxiii. An Act for empowering the South Stockton Local Board to acquire a share in the waterworks undertaking of the Stockton and Middlesbrough Water Board and for other purposes.

clxxiv. An Act to empower the Mayor Aldermen and Burgesses of the Borough of Swansea to make and maintain additional Waterworks, to make other provisions in relation to their Waterworks Undertaking to borrow money and for other purposes.

clxxv. An Act for the prevention of Encroachments upon the Malvern Hills, and for other purposes.

clxxvi. An Act to enable the Mayor and Commonalty and Citizens of the City of London to establish a Free Steam Ferry across the River Thames east of London Bridge to apply the income and to raise monies on the security of the rents and profits of the Bridge House Estates and for other purposes.

clxvii. An Act for incorporating and conferring powers on the Weston-super-Mare Grand Pier Company; and for other purposes.

clxxviii. An Act to continue and extend the powers of the Bank of South Australia and for other purposes.

clxxix. An Act to authorise the Barrmill and Kilwinning Railway Company to construct new Railways; to change the name of the Company; and for other purposes.

clxxx. An Act to enable the Mayor Aldermen and Burgesses of the Borough of Dewsbury to make new Streets and Street Improvements and to make further provision for the Improvement and good Government of the Borough and for other purposes.

clxxxi. An Act to incorporate a Company for the Construction of the Dore and Chinley Railway and for other purposes.

clxxxii. An Act to enable the Dublin Wicklow and Wexford Railway Company to construct in the City of Dublin connecting Railways between Westland Row Terminus and the Railways of the Great Northern Railway (Ireland) and the Midland Great Western Railway (Ireland) on the north side of the River Liffey to be called the City of Dublin Junction Railways and for other purposes.

clxxxiii. An Act to authorise the Highland Railway Company to construct new Railways; and for other purposes.

clxxxiv. An Act to amalgamate the undertakings of the Highland, the Sutherland, and the Sutherland and Caithness Railway Companies, and the Duke of Sutherland's Railway; and for other purposes.

clxxxv. An Act to authorise the Metropolitan Railway Company to deviate parts of the Rickmansworth Extension Railway and Chorley Wood Lane to purchase additional lands to extend the time for compulsory purchase of lands and completion of works to give effect to an arrangement for vesting in them the powers to make and maintain Railway No. 2 authorised by the Metropolitan and District Railways (City Lines and Extensions) Act 1879 to provide for consolidation of debenture stocks and for other purposes.

clxxxvi. An Act to extend some of the powers of the Sutton Bridge Dock Company to make further provisions with respect to their unissued capital and for other purposes.

clxxxvii. An Act for incorporating a Board of Drainage Commissioners with powers to drain and improve certain lands in the townships of Reedness and Swinefleet in the parish of Whitgift in the West Riding of the County of York.

clxxxviii. An Act to alter and amend the Clacton-on-Sea Special Drainage District Act 1880.

clxxxix. An Act to enable the Trustees for the District and Harbour of Maryport to raise a further Sum of Money for the Improvement of the Harbour of Maryport and for other purposes.

cxc. An Act for constituting a portion of the Railways authorised by "the North Cornwall Railway Act 1882" a separate Undertaking; and for other purposes.

xci. An Act to authorise the London Southern Tramways Company to raise additional capital and for other purposes.

cxcii. An Act to extend the time for constructing the North London Tramways; to empower the North London Tramways Company to raise additional Capital, and for other purposes.

cxciii. An Act to extend the Time for the Compulsory Purchase of Lands for the Uxbridge and Rickmansworth Railway.

cxciv. An Act for reviving and rendering valid certain Letters Patent granted to Edward Wright for Improvements in Paint Brushes.

cxcv. An Act for authorising the Liskeard and Caradon Railway Company to extend their Railway to Launceston and for authorising arrangements between them and the Liskeard and Looe Union Canal Company and for other purposes.

cxcvi. An Act to amend the Neath Harbour Acts, to alter the Constitution of the Neath Harbour Commissioners, to authorise the Construction of new Works, and to confirm and regulate the borrowing of moneys, and for other purposes.

cxcvii. An Act for incorporating the West Worthing Waterworks and Baths Company and for vesting the West Worthing Waterworks and Baths in that Company and for other purposes.

cxcviii. An Act for conferring further powers on the South Eastern Railway Company in respect to their own undertaking and of the undertakings of other Companies.

cxcix. An Act to incorporate and confer powers on the Birmingham Compressed-Air Power Company and for other purposes.

cc. An Act to revive and extend the powers of the Cleveland Extension Mineral Railway Company.

cci. An Act for conferring further powers on the Southwark and Vauxhall Water Company.

ccii. An Act to empower the Taff Vale Railway Company to construct a New Railway at Cardiff and to acquire additional Lands and to raise further Capital and for other purposes.

cciii. An Act to amend the Stockton and Middlesbrough Corporations Waterworks Act 1876 and to confer further powers upon the Corporations of the Boroughs of Stockton-on-Tees and Middlesbrough and the Stockton and Middlesbrough Water Board for the supply of Water to the said Boroughs and their neighbourhoods and for other purposes.

cciv. An Act to provide for the vesting of the undertaking of the Eastern Bengal Railway Company in the Secretary of State in Council of India and for other purposes.

ccv. An Act to enable the Great North of Scotland Railway Company to extend their Railway to Rosehearty, in the County of Aberdeen, and for other purposes.

ccvi. An Act to authorise the Great Western Railway Company to make and maintain certain railways in the county of Gloucester and to acquire lands and to confer further powers upon that Company and the Corporation of Carmarthen the Swindon and Cheltenham Extension Railway Company and the Llanelly Harbour and Burry Navigation Commissioners; and for other purposes.

ccvii. An Act for conferring further powers upon the London and North Western Railway Company in relation to their own undertaking and other undertakings in which they are interested jointly with other companies and also for conferring powers upon the North Staffordshire Railway Company the Great Western Railway Company the Lancashire and Yorkshire Railway Company and the Manchester Sheffield and Lincolnshire Railway Company in relation to such other undertakings and upon the Manchester South Junction and Altrincham Railway Company in relation to their own undertaking and for vesting in the London and North Western Railway Company the undertaking of the Vale of Towy Railway Company and for other purposes.

ccviii. An Act to provide for a further Supply of Water to the Town of Northampton and adjacent places and for other purposes.

P. ccix. An Act to provide for ascertaining any Rights of Common or other rights in or over Strensall Common, in the North Riding of the county of York, and for the acquisition and compensation of such rights, and the use of the said Common and adjoining land for military and other purposes.

P. ccx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government District of Arlecdon and Frizington, the Borough of Bradford (Yorks), the Falmouth United Sewerage District, the Special Drainage District of Flaxley, the Local Government Districts of Holmfirth and Lindfield, the Borough of Over Darwen, the Local Government Districts of Rothwell and Saint Mary Church, and the Warwick Joint Hospital District.

P. ccxi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the City and County of Bristol, the Cities of Carlisle and Coventry, the Local Government District of Northwich, the Borough of Preston, the Rural Sanitary District of the Taunton Union, and the Borough of Warrington.

P. ccxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act District of Bournemouth, the Special Drainage District of Clacton-on-Sea, the Local Government District of Farnham, the Boroughs of Hythe and Margate, the Improvement Act Districts of Milton-next-Sittingbourne and West Worthing, and the City of Winchester.

P. ccxiii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Unions of Clonmel, Croom, Glin, Kanturk, Limerick, Lismore, Macroom, Mullingar, Rathkeale, and Wexford.

P. ccxiv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Accrington and Church Outfall Sewerage District, the Boroughs of Bangor, Barnsley, and Burnley, the Local Government District of Fulwood, the City of Liverpool, the Local Government District of Llanelly, the Borough of Middlesbrough, the Improvement Act District of Milford, and the Borough of Nottingham.

P. ccxv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Aberavon, the Local Government Districts of Brighouse, and Denton and Haughton, the City of Manchester, and the Local Government Districts of Shipley, Skelton and Brotton, Sowerby Bridge, and Sutton in Ashfield.

P. ccxvi. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Aldborough, Baltimore and Skibbereen, Carlingford Lough, Chatham, Cromer, Cullen, Dawlish, Eyemouth, Fraserburgh, Hove, and Newlyn.

P. ccxvii. An Act to confirm a Provisional Order of the Lord Lieutenant and Privy Council in Ireland relating to the West Clare Railway.

P. ccxviii. An Act to confirm a Provisional Order of the Lord Lieutenant and Privy Council in Ireland relating to the Clogher Valley Tramway.

ccxix. An Act for providing a better supply of Water to the high-level districts of the borough of Belfast and other places adjacent thereto; for conferring further powers on the Belfast Water Commissioners; and for other purposes.

ccxx. An Act to empower the Coventry and District Tramways Company to abandon the

construction of one of their authorised Tramways; to extend the time for constructing the remainder of their authorised works, and for other purposes.

ccxxi. An Act to authorise the Construction of a Railway from the Bishop's Castle Railway at Lydham in the county of Salop to Montgomery in the County of Montgomery.

ccxxii. An Act to enable the Mayor Aldermen and Burgesses of the Borough of Cardiff in the county of Glamorgan to obtain a supply of water from the River Taff Fawr in Breconshire; and to make further provision for the improvement and good government of the borough; and for other purposes.

ccxxiii. An Act for enabling the Metropolitan Board of Works to make certain New Streets in the Metropolis; for amending the Metropolitan Street Improvements Act 1877; for conferring further powers upon the said Board with respect to Plumstead Common and Hackney Commons and for other purposes.

ccxxiv. An Act for authorising the construction of a railway in Lancashire, to be called the Blackpool Railway; and for other purposes.

ccxxv. An Act to empower the Metropolitan Railway Company to extend their Railway to Hendon in the county of Middlesex and for other purposes.

ccxxvi. An Act to authorise the making of Railways in the County of Lancaster to connect the Railway of the West Lancashire Railway Company with the Railway of the Southport and Cheshire Lines Extension Railway Company and for other purposes.

ccxxvii. An Act to authorise the Mersey Railway Company to make a Branch Railway in Birkenhead and for other purposes.

ccxxviii. An Act for enabling the Metropolitan Board of Works to alter the situation of the New Battersea Bridge authorised by "The Metropolitan Bridges Act 1881" and for other purposes.

ccxxix. An Act to confer further Powers on the Metropolitan District Railway Company.

ccxxx. An Act to enable the West Lancashire Railway Company to extend their Railway to the Preston Docks in the county of Lancaster and to confer further powers in relation to their Undertaking on the Company and for other purposes.

ccxxxi. An Act for vesting in the Plymouth Devonport and South Western Junction Railway Company the powers conferred by "The Devon and Cornwall Central Railway Act, 1882" and for the abandonment of a portion of the Railway authorised by that Act and for the dissolution of the Devon and Cornwall Central Railway Company and for other purposes.

ccxxxii. An Act for extending the boundaries of the city of York and county of the same city; for consolidating and amending various provisions of the Local Acts in force within the city; and for other purposes.

ccxxxii. An Act to authorise the Leominster and Bromyard Railway Company to complete their authorised Railway from Steens Bridge to Bromyard; and for other purposes.

ccxxxiv. An Act for incorporating the Chatham and Brompton Tramways Company and empowering them to construct street tramways in the parishes of Chatham and Gillingham in the county of Kent and for other purposes.

ccxxxv. An Act for conferring further powers upon the Great Western Railway Company in connexion with their own and other Undertakings and upon them and other Companies in connexion with Undertakings in which they are jointly interested; for vesting in the Great Western Railway Company the Undertakings of the Coleford Railway Company and the Bristol and North Somerset Railway Company; for authorising and confirming agreements between the Great Western Railway Company and other Companies; and for other purposes.

ccxxxvi. An Act to revive the powers and extend the time for the compulsory Purchase of Lands for and to extend the time for the completion of parts of the Railways of the Rosebush and Fishguard Railway Company to enable that Company to raise additional Capital to change the name of the Company and for other purposes.

ccxxxvii. An Act for the construction maintenance and regulation of a Pier and Lift at Folkestone in the county of Kent and for other purposes.

ccxxxviii. An Act for incorporating and conferring powers on the Llandrindod Wells Water Company.

ccxxxix. An Act to consolidate the city of Chester into one parish; make improved provision for the levying of Rates; provide for the issue of Corporation Stock; make provision as to Markets and Fairs; for freeing the Dee Bridges of Tolls; and for the improvement government and health of the city; to amend the Improvement Act; and for other purposes.

ccxl. An Act to extend the time for the completion of the Tramways authorised by the Plymouth Devonport and District Tramways Act 1882 and for other purposes.

ccxli. An Act to authorise the Construction of Street Tramways in certain parts of Edinburgh and Leith; and for other purposes.

ccxlii. An Act for incorporating the Halifax High Level and North and South Junction Railway Company and authorising them to make and maintain the Halifax High Level and North and South Junction Railway and for other purposes.

ccxliii. An Act to revive and extend the powers of the several Acts relating to the Poulnasherry Reclamation; and for other purposes.

ccxliv. An Act to authorise the Lea Bridge Leyton and Walthamstow Tramways Company to construct new Tramways in the counties of Middlesex and Essex and for other purposes.

ccxlv. An Act for empowering the Rotherham and Bawtry Railway Company to raise additional Capital; and for other purposes.

ccxlvi. An Act for incorporating and conferring powers on the Tendring Hundred Waterworks Company.

ccxlvii. An Act for authorising the London and South-western Railway Company to construct additional works and to purchase additional lands and for conferring other powers upon them; for the widening of the Somerset and Dorset Railway; for authorising agreements between the Company and the Wimbledon and West Metropolitan Junction Railway Company; and for other purposes.

ccxlviii. An Act to authorise the construction of a Railway from Pwllheli to Porthdinllcyn in the county of Carnarvon; and for other purposes.

ccxlix. An Act for incorporating the West Gloucestershire Water Company and conferring powers upon them with reference to the construction of Works and the supply of Water and otherwise, and for other purposes.

P. ccl. An Act to confirm a Provisional Order made by the Scotch Education Department under the Education (Scotland) Act, 1878, to enable the School Board for Ardchattan and Muckairn, in the county of Argyll, to put in force the Lands Clauses Consolidation (Scotland) Act, 1845, and the Acts amending the same.

P. ccli. An Act to confirm a Provisional Order of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883, relating to the Drogheda Union.

cclii. An Act to enable the Golden Valley Railway Company to abandon a portion of their authorised Railway; to construct new Railways; and for other purposes.

ccliii. An Act to authorise the Wirral Railway Company to make a Branch Railway to Birkenhead and for other purposes.

ccliv. An Act to authorise the Hull Barnsley and West Riding Junction Railway and Dock Company to raise further money by debentures.

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cclvi. An Act to authorise the Great Western Railway Company to acquire the Pier and Railway Undertaking of the Bristol and Portishead Pier and Railway Company and for other purposes.

cclvii. An Act to authorise the Construction of a Dock at Barry Island and Railways and Works in Glamorganshire connected therewith and for other purposes.

cclviii. An Act to authorise the Easton and Church Hope Railway Company to make branch railways in the Parish of Portland in the County of Dorset and for other purposes.

cclix. An Act to amend the provisions of the London and South-western and Metropolitan District Railway Companies (Kingston and London Railway) Act 1882.

cclx. An Act for constructing a Subway or Tunnel between East and West Cowes under the River Medina and approaches thereto and for other purposes.

cclxi. An Act for empowering the Milford Docks Company to construct railways, and for other purposes.

cclxii. An Act to increase the number of Aldermen and Councillors of the Borough of Brighton: to authorise the Corporation of the said Borough to make and maintain certain Works and Improvements to provide a new Market to regulate the Race-course and certain Squares and Enclosed Places and Burial Grounds to purchase Lands and to make further provision for the good Government of the Borough and to borrow further moneys: and for other purposes.

PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,

AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

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1. An Act to enable the Executors and surviving Trustee of the Will of Augustus John Smith Esquire deceased to surrender existing Leases and to accept a new Lease of the Scilly Isles and to determine a Trust for Accumulation contained in the said Will and for other purposes.

2. An Act to authorise certain arrangements with regard to the Trust Estate of the late Robert Montgomery Hamilton Lord Belhaven and Stenton, and to empower his Trustee to carry the same into effect.

3. An Act to confirm certain Leases Conveyances and Assignment under the Will of William Hallett Esquire deceased and to give the Trustees powers of leasing and sale and for other purposes.

4. An Act to enable the Sale of the Glebe Lands of the Rectory of Winwick, in the County Palatine of Lancaster, and the disposal of the proceeds for the endowment of that Rectory, and additional endowments of other benefices.

5. An Act to further amend "The Earl of Aylesford's Estate Act, 1882."

6. An Act to facilitate the Sale, free from incumbrances, of the Estates in England and Ireland of the Right Honourable William Reginald Earl of Devon, and the Honourable Edward Baldwin Courtenay, commonly called Lord Courtenay.

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TO THE

PUBLIC GENERAL ACTS,

47 & 48 VICTORIA.—A.D. 1884.

NOTE.—The capital letters placed after the chapter have the following signification :—

E.	*that the Act relates to*		England (and Wales, if it so extend).
S.	,,	,,	Scotland exclusively.
I.	,,	,,	Ireland exclusively.
W.	,,	,,	Wales exclusively.
E. & I.	,,	,,	England and Ireland.
E. & S.	,,	,,	England and Scotland.
U.K.	,,	,,	Great Britain and Ireland (and Colonies, if it so extend).
C.	,,	,,	The Colonies, or any of them.

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—— to confirm a similar Order relating to Bury Saint Edmund's - - -	xlii. E.
No. 3:	
—— to confirm a similar Order relating to Saint James, Westminster, Saint Martin-in-the-Fields, and Saint George, Hanover Square -	lxxvi. E.
Electric Lighting Orders—*cont.*	
No. 4:	
—— to confirm a similar Order relating to the Fulham District. - - - -	lxxxiv. E.
Elementary Education Act, 1870. *See* Education Department Order Confirmation.	
Epidemic Diseases. *See* Cholera, &c. Protection.	
Expiring Laws Continuance; to continue various expiring Laws - - - -	53. U.K.
[*For Acts continued, see Table A., p.* 251, *post.*]	
Fisheries; for the further Protection of Fish other than Salmon in Fresh Waters -	11. E.
—— to amend the Fisheries (Oyster, Crab, and Lobster) Act, 1877 (40 & 41 Vict. c. 42.) - - - -	26. U.K.
—— to further amend the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45.) - - -	27. U.K.
—— *See also* Oyster and Mussel Fisheries Order Confirmation.	
Fisheries of Ireland; to provide for the better administration of the Fund under the control of the Trustees to aid the Sea and Coast Fisheries of Ireland; and for other purposes in relation thereto - - -	21. I.
—— to promote the Cultivation of Oysters in Ireland -	48. I.
Frauds (Bankruptcy). *See* Bankruptcy Frauds and Disabilities.	
Freshwater Fisheries; for the further Protection of Fish other than Salmon in Fresh Waters - - -	11. E.
Gas Orders Confirmation:	
No. 1:	
—— for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70.), relating to Colwyn Bay and District Gas, Crays Gas, Fleetwood Gas, Frome Gas, and Hull Gas - -	xxxix. E.

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Gas Orders Confirmation—*cont.* No. 2:		
—— to confirm certain similar Orders relating to Emsworth Gas, Hornsey Gas, Kirkburton Gas, Quorndon, and Mountsorrel Gas, and Slough Gas	li.	E.
General Pier and Harbour Act, 1861. *See* Pier and Harbour Orders Confirmation.		
General Prisons (Ireland) Act, 1877. *See* Prisons.		
Gloucester Election. *See* Corrupt Practices (Suspension of Elections).		
Gloucester and Bristol (Sees of). *See* Bishopric of Bristol.		
Great Seal; to simplify the passing of Instruments under the Great Seal of the United Kingdom - - -	30.	U.K.
Greek Marriages; to remove Doubts as to the Validity of certain Marriages of Members of the Greek Church in England - - - -	20.	E.
Greenwich Hospital, &c. Pensions; to amend the Law respecting the Payment of Naval and Greenwich Hospital Pensions - - -	44.	U.K.
Hackney Carriage Licences. *See* Customs and Inland Revenue.		
Harbour Orders Confirmation. *See* Pier and Harbour Orders Confirmation.		
Health (Public). *See* Public Health.		
Highways and Locomotives Act, 1878. *See* Local Government Board's Orders Confirmation (*b*).		
Hospitals (Cholera); to enable sanitary authorities in Ireland to take possession of land for the erection of temporary Cholera Hospitals - -	59.	I.
Hours of Polling at Elections; to extend the Hours of Polling at Parliamentary and Municipal Elections in certain Boroughs - - -	34.	U.K.
Illegal Practices. *See* Municipal Elections (Corrupt and Illegal Practices).		
Improvement of Lands (Ecclesiastical Benefices); to prohibit charges for Improvements upon Ecclesiastical Lands otherwise than with the consent of the Patron and Bishop - - -	67.	E.
Inclosure Acts. *See* Commons Regulation Order Confirmation.		
Income Tax. *See* Customs and Inland Revenue.		
Incorporation of Chartered Companies; to declare the Law relating to the Incorporation of Chartered Companies	56.	U.K.
Indian Loan Annuity, 1881. *See* National Debt.		
Indian Marine Service; to provide for the regulation of Her Majesty's Indian Marine Service - -	38.	U.K.
Industrial and Reformatory Schools (Manx Children); for enabling Manx Children to be sent to Reformatory or Industrial Schools in Great Britain - - -	40.	G.B.
Inland Revenue, &c.; to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue [Tea; Duty on Licence for Hackney Carriage; Reduction of Duties on certain Carriages; Income Tax.] - - -	25.	U.K.
—— to amend the Law relating to the Customs and Inland Revenue and to the Audit of Public Accounts, and for other purposes connected with the Public Revenue and Expenditure - - -	62.	U.K.
Intestates Estates; to amend the Law respecting the administration of the Personal Estate and the Escheat of the Real Estate of Deceased Persons; and for other purposes - - - -	71.	E. & I.
Ireland, Acts relating exclusively to. *See* Cholera Hospitals. Cholera, &c. Protection. County of Dublin Jurors' and Voters' Revision. Dublin Science and Art Museum. Loans for Schools and Training Colleges. Local Government Board's (Ire-		

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land) Orders Confirmation. National School Teachers. Oyster Cultivation. Prisons. Public Health (Ireland). Sea and Coast Fisheries Fund. Summary Jurisdiction over Children. Tramways (Ireland) Orders Confirmation. Tramways and Public Companies. Trustee Churches.		
Irish Church Act, 1869. *See* Trustee Churches.		
Irish Fisheries. *See* Fisheries of Ireland.		
Irish Land Commission. *See* Public Works Loans.		
Isle of Man; for amending the Isle of Man Harbours Acts, 1872 and 1874 (35 & 36 Vict. c. 23. and 37 & 38 Vict. c. 8.)	7.	E.
—— for enabling Manx Children to be sent to Reformatory or Industrial Schools in Great Britain - - -	40.	G.B.
Judicature, Supreme Court of; to amend the Supreme Court of Judicature Acts (36 & 37 Vict. c. 66., &c.); and for other purposes - -	61.	E.
Jurors' and Voters' Revision (County of Dublin); to facilitate the Revision of Lists of Jurors and Voters, and the Registration of Voters, in the county of Dublin -	35.	I.
Justice, Administration of. *See* Bankruptcy Appeals (County Courts). Bankruptcy Frauds and Disabilities. Cholera Hospitals. Colonial Attorneys Relief. Colonial Prisoners Removal. Criminal Lunatics. Greek Marriages. Indian Marine Service. Intestates Estates. Married Women's Property. Matrimonial Causes. Municipal Elections (Corrupt and Illegal Practices). National Debt (Conversion of Stock). Naval Discipline. Oyster Cultivation. Pensions and Yeomanry Pay. Post Office (Protection). Prisons. Prosecution of Offences. Reformatory and Industrial Schools (Manx Children). Settled Land. Sheriff Court Houses. Summary Jurisdiction. Summary Jurisdiction over Children. Supreme Court of Judicature. Yorkshire Registries.		
Kirkintilloch Sewage Order Confirmation; to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101.), relating to the Burgh of Kirkintilloch - -	cix.	S.
Labourers (Ireland) Act, 1883. *See* Local Government Board's (Ireland) Orders Confirmation (*a*).		
Land. *See* Improvement of Lands. Settled Land.		
Land Commissioners for England. *See* City of Norwich (Mousehold Heath). Commons Regulations Order Confirmation. Drainage, &c. Orders Confirmation. Metropolitan Commons Acts.		
Land Drainage Act, 1861. *See* Drainage, &c. Orders Confirmation.		
Libraries (Public); to amend the Public Libraries Acts (18 & 19 Vict. c. 70., &c.) -	37.	U.K.
Licensing (Evidence); to extend section forty-one of the Licensing Act, 1872 (35 & 36 Vict. c. 94.) - - -	29.	E. & I.
Loans (Public Works). *See* Public Works Loans.		
Loans for Schools and Training Colleges; to amend the Law relating to the Buildings of Non-vested National Schools and Training Colleges in Ireland - - -	22.	I.
Loans for Teachers' Residences; to amend the National School Teachers (Ireland) Act, 1879 (42 & 43 Vict. c. 74.), in so far as it relates to the Loans for Teachers' Residences -	45.	I.
Lobster, &c. Fisheries. *See* Fisheries.		

Local Government Board's Orders Confirmation :

(a) *Alkali, &c. Works Regulation Act*, 1881 :

—— to confirm a Provisional Order of the Local Government Board under the provisions of the Alkali, &c. Works Regulation Act, 1881 (44 & 45 Vict. c. 37.), relating to Salt Works - - clvii. E.

(b) *Highways and Locomotives Act*, 1878 :

—— to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77.), relating to the County of Montgomery - lxxxi. W.

(c) *Poor Law Acts* :

—— to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61.), as amended and extended by the Poor Law Act, 1879 (42 & 43 Vict. c. 12.), relating to the Parishes of Alton-Barnes, Barnstaple, Bishops Tawton, Buckland - Brewer, Bulkworthy, Drewsteignton, East Knoyle, Frithelstock (two), Hittesleigh, Horningsham, Maiden - Bradley-with-Yarnfield, Newton-Saint-Petrock, Parkham, Pertwood, and Sutton-Veney; and to the Chapelry of Alton Priors - xliii. E.

No. 2 :

—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61.), as amended and extendod by the Poor Law Act, 1879 (42 & 43 Vict. c. 12.), and the Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58.), relating to the Parishes of Bovey-Tracey, Broadwood Kelly, Calverleigh, Colyton, Combe-in-Teignhead, Denbury, East Ogwell, Haccombe, Hennock, High Week, Ipplepen, Loxbear, Lustleigh, Monk Okehampton, Moreton-Hampstead, North Bovey, Southleigh, Stoke-in-Teignhead, Torbryan (two), and Woolborough - - - xliv. E.

No. 3 :

—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashill, Beckington, Berkeley, Broadway, Brockley, Chelvey, Crewkerne, Cricket Malherby, Dinnington, Dowlish-Wake, Elm, Frome, Hawkridge, Ilton, Kilmersdon, Kingston, Knowle-Saint-Giles, Laverton, Marston Biggott, Mells, Road, Seavington - Saint - Mary, Standerwick, Tellesford, Wayford, West Dowlish, Whatley, Whitelackington, Withypoole, and Woolverton xlv. E.

No. 4 :

—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the parishes of Belchalwell, Blackford, Bruton, Butleigh, Charlton Horethorne, Charlton Musgrove, Fifehead Neville, Henstridge, Holton, Horsington, Marston Magna, Milborne Port, North Brewham, North Cadbury, North Cheriton, Okeford Fitzpaine, Penselwood, Pitcombe, Queen Camel, Shepton - Montague, South Brewham, Stoke-Trister, Stowell, Walton, and Wincanton - - - lxxiii. E.

No. 5 :

—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the

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Local Government Board's Orders Confirmation—*cont.*		
(c.) *Poor Laws Acts*—cont.		
Parishes of Acton, Alphamstone, Assington, Belchamp-Otten, Belchamp-Walter, Boxsted, Bulmer, Bures-Saint-Mary, Castlecamps, Cavendish, Chilton, Foxearth, Glemsford, Great Cornard, Great Henny, Great Waldingfield, Helion's-Bumpstead, Lamarsh, Linstead Parva, Liston, Little Cornard, Little Waldingfield, Long Melford, Mendham (two), Metfield, Middleton, Newton (near Sudbury), Redenhall with Harleston, Somerton, Stoke (near Nayland), Twinstead, and Withersdale, and to the Hamlet of Buers -	xlvi.	E.
No. 6:		
—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashen, Bildeston, Boxford, Brockley, Brettenham, Carlton, Colne-Engain, Great Maplestead, Great Yeldam, Groton, Hitcham, Kelsale, Kettlebaston, Lindsey, Little Maplestead, Little Yeldam, Naughton, Nedging, Polstead, Preston, Ridgewell, Semer, Sible - Hedingham, Stambourne, Tilbury juxta Clare, Toppesfield, Wattesham, Whatfield, Whepstead, and White Colne - - -	xlvii.	E.
No. 7:		
—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Abberley, Ashperton (two), Donnington, Holy Cross in Pershore, In-Liberties, Ledbury, Llangaran, Munsley (two), Norton juxta Kempsey, Putley (two), Rock, Saint Andrew, Saint Andrew in Pershore, Saint Martin, Saint Nicholas, Saint Peter, Stoke Edith, Stretton-Grandsome or Grandison, Stoulton, Upper Bullingham, Weston - Beggard, Whitchurch, Woolhope, and Yarkhill, to the Chapelries of Westhide and Whittington, and to the Township of Grafton - - -	xlviii.	E.
No. 8:		
—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Abergwilly, Bettws Bledrws, Carmarthen, Cole Orton, Kings Sutton, Llandewi Aberarth, Llangybi, Llanpumpsaint, Llansaintfraed and Llannon, Llanvihangel Abercowin, Mydrim, Newbottle, Newchurch, and Thringston, and to the Townships of Thelwall and Woolstone with Martinscroft	xlix.	E.
No. 9:		
—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Ashen, Birdbrook, Brockdish, Haverhill, Hundon, Little Wratting, Ovington, Peasenhall, Sibton, Steeple Bumpstead, Stoke-by-Clare, Stratton-Long-Saint-Mary, Sturmer, Thorpe Abbotts, Tilbury-juxta-Clare, Wacton Magna, Whixoe, and Withersfield; and to the Townships of Emswell-with-Kelleythorpe, Eskdaleside, Great Driffield, Little Driffield, and Ugglebarnby - - -	lxxiv.	E.

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Local Government Board's Orders Confirmation—*cont.*

(c.) *Poor Law Acts*—cont.

No. 10:

—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of of Charley (two), Eddlesborough, Helmdon, Ivinghoe, Little Gaddesden, Markfield, Marston Saint Lawrence (two), Middleton Cheney, Newtown Linford, Slapton, Syresham, Thenford, and Whitfield; to the Townships of Marnham and South Clifton; and to the Hamlet of Astwell-with-Falcutt - lxxv. E.

No. 11:

—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Bisley, Bratton Clovelly, Broadwood Widger, Chittlehampton, Cranham, East Worlington (two), Haresfield, Hay, Lapford, Llowes, Meshaw, Miserdine, Randwick (two), Standish, Stonehouse, Thelbridge, West Worlington, Witheridge (two), and Woolfardisworthy - - cxiii. E.

No. 12:

—— to confirm certain similar Orders under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1822, relating to the Parishes of Barnwood, Brockthrop (two), Churchdown, Down Hatherly, Harescomb (two), Haresfield (two), Hempstead,

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Local Government Board's Orders Confirmation—*cont.*

(c.) *Poor Law Acts*—cont.

Maismore, Matson, North Hamlet, Quedgley (two), Saint Catherine's with Kingsholm Saint Catherine's, Saint John Baptist, Saint Mary-de-Lode with Kingsholm Saint Mary, Saint Nicholas, Sandhurst, South Hamlet, Upton Saint Leonard's, Ville of Wotton, and Whaddon (two); to the Township of Over Higham and Linton, and to the Hamlets of Barton Saint Mary, Barton Saint Michael, Longford Saint Catherine's, Longford Saint Mary, Tuffley, Twigworth, and Wootton Saint Mary - lxxxii. E.

No. 13:

—— to confirm certain similar Orders under the provisions of the Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106.), as amended by the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122.), and extended by the Poor Law Act, 1879, relating to the City of Oxford and the Parish of Saint Mary, Whitechapel - lxxxiii. E.

No. 14:

—— to confirm a similar Order under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, and the Divided Parishes and Poor Law Amendment Act, 1882, relating to the Parishes of Dawlish and Kenton - cxiv. E.

No. 15:

—— to confirm a similar Order under the provisions of the Poor Law Amendment Act, 1867, as amended by the Poor Law Amendment Act, 1868, and extended by the Poor Law Act, 1879, relating to the Parish of Saint Luke (Middlesex) - - - cxv. E.

(d) *Public Health Act*, 1875:

—— to confirm certain Provisional Orders of the Local Government Board relating to the Local Government

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(*d*) *Public Health Act*, 1875—cont.		
Districts of Bognor, Ealing, and Henley	iv.	E.
No. 2:		
—— to confirm certain similar Orders relating to the Local Government Districts of Dorking and Hendon, the Rural Sanitary District of the Kingston Union, the Local Government District of Malvern, the Borough of Portsmouth, the City of Truro, and the Local Government Districts of Wimbledon and Ystradyfodwg	clviii.	E.
No. 4:		
—— to confirm certain similar Orders relating to the Local Government District of Arlecdon and Frizington, the Borough of Bradford (Yorks), the Falmouth United Sewerage District, the Special Drainage District of Flaxley, the Local Government Districts of Holmfirth and Lindfield, the Borough of Over Darwen, the Local Government Districts of Rothwell and Saint Mary Church, and the Warwick Joint Hospital District	ccx.	E.
No. 5:		
—— to confirm certain similar Orders relating to the City and County of Bristol, the Cities of Carlisle and Coventry, the Local Government District of Northwich, the Borough of Preston, the Rural Sanitary District of the Taunton Union, and the Borough of Warrington	ccxi.	E.
No. 6:		
—— to confirm certain similar Orders relating to the Improvement Act District of Bornemouth, the Special Drainage District of Clacton-on-Sea, the Local Government District of Farnham, the Boroughs of Hythe and Margate, the Improvement Act Districts of Milton-next-Sittingborne and West Worthing, and the City of Winchester	ccxii.	E.
No. 7:		
—— to confirm certain similar Orders relating to the Accrington and Church Outfall Sewerage District, the Boroughs of Bangor, Barnsley, and Burnley, the Local Government District of Fulwood, the City of Liverpool, the Local Government District of Llanelly, the Borough of Middlesbrough, the Improvement Act District of Milford, and the Borough of Nottingham	ccxiv.	E.
No. 8:		
—— to confirm certain similar Orders relating to the Borough of Aberavon, the Local Government Districts of Brighouse, and Denton and Houghton, the City of Manchester, and the Local Government Districts of Shipley, Skelton and Brotton, Sowerby Bridge, and Sutton in Ashfield	ccxv.	E.
Local Government Board's (Ireland) Orders Confirmation:		
(*a*) *Labourers (Ireland) Act*, 1883:		
—— to confirm certain Provisional Orders of the Local Government Board for Ireland under the Labourers (Ireland) Act, 1883 (46 & 47 Vict. c. 60), relating to the Unions of North Dublin, Kells, Kilmallock, Mitchelstown, Rathdrum, Tralee, and Tulla	lxxvii.	I.
—— to confirm a similar Order relating to the Carrick-on-Suir Union	cvi.	I.
—— to confirm certain similar Orders relating to the Unions of Cashel, Clogheen, Navan, and Tipperary	cx.	I.
—— to confirm certain similar Orders relating to the Unions		

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Local Government Board's (Ireland) Orders Confirmation—*cont.*	
(*a*) *Labourers (Ireland) Act*, 1883—cont.	
of Delvin, Fermoy, and Newcastle	cxi. I.
—— to confirm a similar Order relating to the Nenagh Union	cxvi. I.
—— to confirm a similar Order relating to the Tipperary Union	cliv. I.
—— to confirm certain similar Orders relating to the Unions of Enniscorthy, Clonakilty, Gorey, Killadysert, and Shillelagh	clvi. I.
—— to confirm certain similar Orders relating to the Unions of Clonmel, Croom, Glin, Kanturk, Limerick, Lismore, Macroom, Mullingar, Rathkeale, and Wexford	ccxiii. I.
—— to confirm a similar Order relating to the Drogheda Union	ccli. I.
(*b*) *Public Health (Ireland) Act*, 1878:	
—— to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Bandon	lxxviii. I.
—— to confirm certain similar Orders relating to new Streets in the City of Dublin, and to the Town of Dungarvan, and to Waterworks in Buncrana	lxxxv. I.
—— to confirm a similar Order relating to Waterworks in the town of Dundalk	civ. I.
—— to confirm certain similar Orders relating to the Naas Burial Ground and the Town of Thurles	cv. I.
London Brokers' Relief; for the Relief of the Brokers of the City of London	3. E.
Lunatics (Criminal); to consolidate and amend the Law relating to Criminal Lunatics	64. E.*
—— to make further provision respecting the removal of Prisoners and Criminal Lunatics from Her Majesty's possessions out of the United Kingdom	31. U.K., &c.
Macclesfield Election. *See* Corrupt Practices (Suspension of Elections).	
Man, Isle of. *See* Isle of Man.	
Manx Children; for enabling Manx Children to be sent to Reformatory or Industrial Schools in Great Britain	40. G.B.
Marine Service (India); to provide for the regulation of Her Majesty's Indian Marine Service	38. U.K.
Marriages (Greek); to remove Doubts as to the Validity of certain Marriages of Members of the Greek Church in England	20. E.
Marriages Legalization. *See* Stopsley. Wood Green Congregational Church.	
Married Women's Property; to amend the sixteenth section of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75.)	14. E. & I.
Matrimonial Causes; to amend the Matrimonial Causes Acts	68. E.
Metropolitan Asylums Board; to enable the Managers of the Metropolitan Asylums District to borrow for certain purposes of the Diseases Prevention (Metropolis) Act, 1883 (46 & 47 Vict. c. 35.)	60. E.
Metropolitan Board of Works; further to amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes	50. E.
Metropolitan Commons (Streatham Common):	
—— to confirm a Scheme [certified by the Land Commissioners for England] under the Metropolitan Commons Act, 1866 (29 & 30 Vict. c. 122.), and the Metropolitan Commons (Amendment) Act, 1869 (32 & 33 Vict. c. 107.), relating to Streatham Common	ii. E.
Metropolitan Police; to provide for the appointment of an additional Assistant Commissioner of Police of the Metropolis and for other purposes relating to the Com-	

* Certain express provisions extend to Scotland and Ireland.

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missioner and Assistant Commissioners of such Police -	17. E.
Mousehold Heath. *See* City of Norwich (Mousehold Heath).	
Municipal Elections (Corrupt and Illegal Practices); for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections	70. E.
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National Debt; to make further provision respecting the Conversion into Two and a half per Cent. Annuities of Three per Cent. Annuities held by the National Debt Commissioners on account of Savings Banks, and for the Redemption of the Indian Loan Annuity, 1881 - -	2. U.K.
—— for giving Facilities for the Conversion of Three per Cent. Stock into Stock of a Lower Denomination, and for other purposes relating thereto - - -	23. U.K.
National School Teachers; to amend the National School Teachers (Ireland) Act, 1879 (42 & 43 Vict. c. 74), in so far as it relates to the Loans for Teachers' Residences -	45. I.
National Schools (Ireland). *See* Loans for Schools and Training Colleges.	
Naval Discipline; to amend the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109.) -	39. U.K.
—— *See also* Indian Marine Service.	
Naval Enlistment; to amend the Naval Enlistment Act, 1853 (16 & 17 Vict. c. 69.), and for other purposes connected therewith - - -	46. U.K.
Naval Pensions; to amend the Law respecting the Payment of Naval and Greenwich Hospital Pensions - -	44. U.K.
Newcastle Chapter; to make provision for the foundation of a Dean and Chapter for the Bishopric of Newcastle, and for the transfer to the Cathedral Church of Newcastle of one of the canonries in the Cathedral Church of Durham, and for the transfer of certain ecclesiastical patronage to the Bishopric and Chapter of Newcastle, and for other purposes connected therewith - - - -	33. E.
New Parishes Acts and Church Building Acts Amendment; to further amend the New Parishes Acts and the Church Building Acts -	65. E.
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Officers (Public Health); to amend the Public Health Act, 1875 (38 & 39 Vict. c. 55.), with respect to the Officers of Local Authorites - -	74. E.
Oxford Election. *See* Corrupt Practices (Suspension of Elections).	
Oyster Cultivation; to promote the Cultivation of Oysters in Ireland - - -	48. I.
Oyster, &c. Fisheries; to amend the Fisheries (Oyster, Crab, and Lobster) Act, 1877 (40 & 41 Vict. c. 42.) -	26. U.K.
—— *See also* Fisheries. Oyster and Mussel Fisheries Order Confirmation.	
Oyster and Mussel Fisheries Order Confirmation:	
—— to confirm an Order made by the Board of Trade under the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45.), relating to Ramsholt - - -	xiii. E.
Parliamentary Elections. *See* Corrupt Practices (Suspension of Elections). Elections (Hours of Poll).	
Pay, &c. of the Yeomanry. *See* Pensions and Yeomanry Pay.	
Payment of Naval, &c. Pensions; to amend the Law respecting the Payment of Naval and Greenwich Hospital Pensions - - -	44. U.K.
Pensions. *See* Naval Pensions.	

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Pensions and Yeomanry Pay; to make further provision with regard to the Pensions of Soldiers, and to the Pay and Pensions of the Yeomanry, and for other purposes - - - -	55.	E. & S.
Pier and Harbour Orders Confirmation:		
—— to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45.), relating to Aldborough, Baltimore and Skibbereen, Carlingford Lough, Chatham, Cromer, Cullen, Dawlish, Eyemouth, Frazerburgh, Hove, and Newlyn - - - -	ccxvi.	U.K.
Police of the Metropolis; to provide for the appointment of an additional Assistant Commissioner of Police of the Metropolis and for other purposes relating to the Commissioner and Assistant Commissioners of such Police	17.	E.
Polling (Hours of) at Elections; to extend the Hours of Polling at Parliamentary and Municipal Elections in certain Boroughs - -	34.	U.K.
Poor Law Acts. *See* Local Government Board's Orders Confirmation (*c*).		
Post Office (Protection); to amend the Law with respect to the Protection of the Post Office and to Offences committed in relation to the Post Office - - - -	76.	U.K.
Prisoners Removal; to make further provisions respecting the removal of Prisoners and Criminal Lunatics from Her Majesty's possessions out of the United Kingdom -	31.	U.K., &c.
Prisons; to amend the General Prisons (Ireland) Act, 1877 (40 & 41 Vict. c. 49.), in certain particulars - -	36.	I.
—— to remove doubts as to the powers of the Secretary of State in relation to the altering, enlarging, rebuilding, and building of Prisons, and appropriating any Building for a Prison - - -	51.	E.
Property of Married Women. *See* Married Women's Property.		
Prosecution of Offences; for Amending the Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22.) - -	58.	E.
Protection of Fish. *See* Freshwater Fisheries.		
Protection of the Post Office; to amend the Law with respect to the Protection of the Post Office and to Offences committed in relation to the Post Office - - -	76.	U.K.
Provisional Orders Confirmation. *See* Aberdeen. City of Norwich (Mousehold Heath). Commons Regulation. Drainage, &c. Education Department. Education Department (Scotland). Electric Lighting. Gas. Kirkintilloch. Local Government Board. Local Government Board (Ireland). Metropolitan Commons (Streatham Common). Oyster and Mussel Fisheries. Piers and Harbours. Tramways. Tramways (Ireland). Water.		
Public Companies, &c.; to amend the Tramways and Public Companies (Ireland) Act, 1883 (46 & 47 Vict. c. 43.)	28.	I.
Public Health; to amend the Public Health Act, 1875 (38 & 39 Vict. c. 55.), so far as relates to the Confirmation of Byelaws - - -	12.	E.
—— to amend the Public Health Act, 1875 (38 & 39 Vict. c. 55.), with respect to the Officers of Local Authorities - -	74.	E.
—— *See also* Local Government Board's Orders Confirmation (*d*).		
Public Health (Ireland); to amend the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52.), with reference to Sanitary Districts - -	77.	I.
—— *See also* Local Government Board's (Ireland) Orders Confirmation (*b*).		
Public Health (Scotland) Act, 1867. *See* Kirkintilloch Sewage Order Confirmation.		

	Chap.	
Public Libraries; to amend the Public Libraries Acts (18 & 19 Vict. c. 70., &c.) - -	37.	U.K.
Public Revenue and Expenditure. *See* Revenue.		
Public Works Commissioners (Ireland). *See* Dublin Science and Art Museum. Public Works Loans.		
Public Works Loans; to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and of loans and purchases by the Irish Land Commission -	49.	U.K.
Redemption of the Indian Loan Annuity, 1881. *See* National Debt.		
Redhill Common. *See* Commons Regulation Order Confirmation.		
Reformatory and Industrial Schools (Manx Children); for enabling Manx Children to be sent to Reformatory or Industrial Schools in Great Britain - - -	40.	G.B.
Registration of Deeds, &c. *See* Yorkshire Registries.		
Registration of Voters, &c. (County of Dublin); to facilitate the Revision of Lists of Jurors and Voters, and the Registration of Voters, in the county of Dublin - -	35.	I.
Regulation of the Army. *See* Army.		
Regulation of the Indian Marine Service. *See* Indian Marine Service.		
Relief of Colonial Attorneys; to amend the Colonial Attorneys Relief Act (20 & 21 Vict. c. 39. and 37 & 38 Vict. c. 41.) - - -	24.	U.K.
Relief of London Brokers. *See* London Brokers' Relief.		
Removal of Colonial Prisoners; to make further provision respecting the removal of Prisoners and Criminal Lunatics from Her Majesty's Possessions out of the United Kingdom - - -	31.	U.K., &c.
Retirement of Mr. Speaker. *See* Speaker, Mr., Retirement of.		
Revenue; to amend the Law relating to the Customs and Inland Revenue and to the Audit of Public Accounts, and for other purposes connected with the Public Revenue and Expenditure -	62.	U.K.
—— *See also* Customs and Inland Revenue.		
Revision of Lists of Jurors and Voters. *See* County of Dublin Jurors' and Voters' Revision.		
Royal Military Asylum, Chelsea; for transferring the Royal Military Asylum at Chelsea from the Commissioners of Her Majesty's Woods, Forests, and Land Revenues to the Commissioners of Her Majesty's Works and Public Buildings	32.	E.
Salt Works. *See* Local Government Board's Orders Confirmation (*a*).		
Sandwich Election. *See* Corrupt Practices (Suspension of Elections).		
Sanitary Districts. *See* Public Health (Ireland).		
Savings Banks. *See* National Debt.		
Schools and Training Colleges; to amend the Law relating to the Buildings of Non-vested National Schools and Training Colleges in Ireland -	22.	I.
Science and Art Museum, Dublin; to confer further powers upon the Commissioners of Public Works in Ireland of acquiring lands in Dublin for all or any of the purposes of the Dublin Science and Art Museum Act, 1877 (40 & 41 Vict. c. ccxxxiv.) - - -	6.	I.
Scotland, Acts relating exclusively to. *See* Aberdeen Improvement. Bankruptcy Frauds and Disabilities. Education Department (Scotland) Order Confirmation. Kirkintilloch Sewage Order Confirmation. Sheriff Court Houses. Trusts.		
Sea and Coast Fisheries Fund; to provide for the better		

	Chap.	
Pensions and Yeomanry Pay; to make further provision with regard to the Pensions of Soldiers, and to the Pay and Pensions of the Yeomanry, and for other purposes - - - -	55.	E. & S.
Pier and Harbour Orders Confirmation:		
—— to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45.), relating to Aldborough, Baltimore and Skibbereen, Carlingford Lough, Chatham, Cromer, Cullen, Dawlish, Eyemouth, Frazerburgh, Hove, and Newlyn - - - -	ccxvi.	U.K.
Police of the Metropolis; to provide for the appointment of an additional Assistant Commissioner of Police of the Metropolis and for other purposes relating to the Commissioner and Assistant Commissioners of such Police	17.	E.
Polling (Hours of) at Elections; to extend the Hours of Polling at Parliamentary and Municipal Elections in certain Boroughs - -	34.	U.K.
Poor Law Acts. *See* Local Government Board's Orders Confirmation (*c*).		
Post Office (Protection); to amend the Law with respect to the Protection of the Post Office and to Offences committed in relation to the Post Office - - - -	76.	U.K.
Prisoners Removal; to make further provisions respecting the removal of Prisoners and Criminal Lunatics from Her Majesty's possessions out of the United Kingdom -	31.	U.K., &c.
Prisons; to amend the General Prisons (Ireland) Act, 1877 (40 & 41 Vict. c. 49.), in certain particulars - -	36.	I.
—— to remove doubts as to the powers of the Secretary of State in relation to the altering, enlarging, rebuilding, and building of Prisons, and appropriating any Building for a Prison - - -	51.	E.
Property of Married Women. *See* Married Women's Property.		
Prosecution of Offences; for Amending the Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22.) - -	58.	E.
Protection of Fish. *See* Freshwater Fisheries.		
Protection of the Post Office; to amend the Law with respect to the Protection of the Post Office and to Offences committed in relation to the Post Office - - -	76.	U.K.
Provisional Orders Confirmation. *See* Aberdeen. City of Norwich (Mousehold Heath). Commons Regulation. Drainage, &c. Education Department. Education Department (Scotland). Electric Lighting. Gas. Kirkintilloch. Local Government Board. Local Government Board (Ireland). Metropolitan Commons (Streatham Common). Oyster and Mussel Fisheries. Piers and Harbours. Tramways. Tramways (Ireland). Water.		
Public Companies, &c.; to amend the Tramways and Public Companies (Ireland) Act, 1883 (46 & 47 Vict. c. 43.)	28.	I.
Public Health; to amend the Public Health Act, 1875 (38 & 39 Vict. c. 55.), so far as relates to the Confirmation of Byelaws - - -	12.	E.
—— to amend the Public Health Act, 1875 (38 & 39 Vict. c. 55.), with respect to the Officers of Local Authorities - -	74.	E.
—— *See also* Local Government Board's Orders Confirmation (*d*).		
Public Health (Ireland); to amend the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52.), with reference to Sanitary Districts - -	77.	I.
—— *See also* Local Government Board's (Ireland) Orders Confirmation (*b*).		
Public Health (Scotland) Act, 1867. *See* Kirkintilloch Sewage Order Confirmation.		

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Tramways Orders Confirmation—*cont.*		
No. 3:		
—— to confirm certain similar Orders relating to Barrow-in-Furness Tramways, North Birmingham Tramways, and South Birmingham Tramways - - - -	cvii.	E.
No. 4:		
—— to confirm certain similar Orders relating to Colchester Tramways, Gravesend, Rosherville, and Northfleet Tramways (Extension), Hartlepools Tramways (Extension), Stockton-on-Tees Tramways (Extension), and Weymouth Tramways - -	cii.	E.
Tramways (Ireland) Orders Confirmation:		
—— to confirm a Provisional Order of the Lord Lieutenant and Privy Council in Ireland relating to the West Clare Railway - - - -	ccxvii.	I.
—— to confirm a similar Order relating to the Clogher Valley Tramway - - -	ccxviii.	I.
Tramways and Public Companies; to amend the Tramways and Public Companies (Ireland) Act, 1883 (46 & 47 Vict. c. 43.) - - -	28.	I.
Trustee Churches; to amend the Irish Church Act, 1869 (32 & 33 Vict. c. 42.); and for other purposes - -	10.	I.
Trusts; to amend the Trusts (Scotland) Act, 1867 (30 & 31 Vict. c. 97.) - - -	63.	S.
Turnpike Acts Continuance; to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith - - -	52.	E.
Valuation (Metropolis); to amend the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67.), by giving greater facilities for appeal to owners and lessees of houses paying rates and taxes in the place of the occupiers - -	5.	E.
Voters' Revision (County of Dublin). *See* County of Dublin Jurors' and Voters' Revision.		
Water Orders Confirmation:		
No. 1:		
—— for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70.), relating to Dyke District Water, Hoddesdon Water, and Thirsk District Water - - - -	xl.	E.
No. 2:		
—— to confirm certain similar Orders relating to Alperton and Sudbury Water, Market Weighton Water, Newmarket Water, and Wisbech Water -	lxxix.	E.
—— *See also* Local Government Board's (Ireland) Orders Confirmation (*b*).		
Wood Green Congregational Church; for legalizing Marriages heretofore solemnized in the Wood Green Congregational Church, in the district of Edmonton (Middlesex)	xii.	E.
Yeomanry Pay, &c.; to make further provision with regard to the Pensions of Soldiers, and to the Pay and Pensions of the Yeomanry, and for other purposes - -	55.	E. & S.
Yorkshire Registries; to consolidate and amend the law relating to the Registration of Deeds and other matters affecting lands and hereditaments within the North, East, and West Ridings of the County of York - -	54.	E.

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administration of the Fund under the control of the Trustees to aid the Sea and Coast Fisheries of Ireland; and for other purposes in relation thereto - -	21. I.
Sea Fisheries; to further amend the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45.) - -	27. U.K.
—— *See also* Oyster and Mussel Fisheries Order Confirmation.	
Settled Land; to amend the Settled Land Act, 1882 (45 & 46 Vict. c. 38.) -	18. E. & I.
Sheriff Court Houses; to amend the Sheriff Court Houses Act, 1860 (23 & 24 Vict. c. 79) -	42. S.
Soldiers' Pensions. *See* Pensions and Yeomanry Pay.	
Speaker, Mr., Retirement of; for settling and securing an Annuity upon the Right Honorable Sir Henry Bouverie William Brand, G.C.B., in consideration of his eminent services - -	1. U.K.
Stopsley; for legalizing Marriages heretofore solemnized in the District Church of Stopsley, in the Parish of Luton (Bedford) - -	i. E.
Streatham Common. *See* Metropolitan Commons.	
Strensall Common; to provide for ascertaining any Rights of Common or other rights in or over Strensall Common, in the North Riding of the County of York, and for the acquisition and compensation of such rights, and the use of the said Common and adjoining land for military and other purposes - -	ccix. E.
Summary Jurisdiction; to repeal divers Enactments rendered unnecessary by the Summary Jurisdiction Acts and other Acts relating to Proceedings before Courts of Summary Jurisdiction, and to make further provision for the uniformity of Proceedings before those Courts. [*For enactments repealed, see Table B., p. 258, post.*] -	43. E.
Summary Jurisdiction over Children; to amend the Summary Jurisdiction (Ireland) Acts so far as they relate to Children and young Persons - - - -	19. I.
Superannuation; to extend certain Powers given by the Superannuation Act Amendment Act, 1873 (36 & 37 Vict. c. 23.) - - -	57. U.K.
Supreme Court of Judicature; to amend the Supreme Court of Judicature Acts (36 & 37 Vict. c. 66., &c.); and for other purposes - -	61. E.
Suspension of Elections. *See* Corrupt Practices (Suspension of Elections).	
Teachers (National School); to amend the National School Teachers (Ireland) Act, 1879 (42 & 43 Vict. c. 74.), in so far as it relates to the Loans for Teachers' Residences -	45. I.
Tea Duties. *See* Customs and Inland Revenue.	
Three per Cent. Stock. *See* National Debt.	
Tiverton. *See* Benefices (Tiverton Portions) Consolidation Amendment.	
Training Colleges (Ireland). *See* Loans for Schools and Training Colleges.	
Tramways Orders Confirmation:	
No. 1: —— to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870 (33 & 34 Vict. c. 78.), relating to Birmingham and Aston Tramways, Blackpool Tramways, Bootle-cum-Linacre Corporation Tramways, Cardiff Tramways (Extensions), Dudley, Sedgley, and Wolverhampton Tramways, Liverpool Corporation Tramways (Extensions), and Nottingham Tramways - -	cxii. E.
No. 2: —— to confirm certain similar Orders relating to Leicester Tramways (Extensions), Walsall and District Tramways, and Wigan Tramways -	lxxx. E.

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Tramways Orders Confirmation—*cont.*		
No. 3:		
—— to confirm certain similar Orders relating to Barrow-in-Furness Tramways, North Birmingham Tramways, and South Birmingham Tramways	cvii.	E.
No. 4:		
—— to confirm certain similar Orders relating to Colchester Tramways, Gravesend, Rosherville, and Northfleet Tramways (Extension), Hartlepools Tramways (Extension), Stockton-on-Tees Tramways (Extension), and Weymouth Tramways	cii.	E.
Tramways (Ireland) Orders Confirmation:		
—— to confirm a Provisional Order of the Lord Lieutenant and Privy Council in Ireland relating to the West Clare Railway	ccxvii.	I.
—— to confirm a similar Order relating to the Clogher Valley Tramway	ccxviii.	I.
Tramways and Public Companies; to amend the Tramways and Public Companies (Ireland) Act, 1883 (46 & 47 Vict. c. 43.)	28.	I.
Trustee Churches; to amend the Irish Church Act, 1869 (32 & 33 Vict. c. 42.); and for other purposes	10.	I.
Trusts; to amend the Trusts (Scotland) Act, 1867 (30 & 31 Vict. c. 97.)	63.	S.
Turnpike Acts Continuance; to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith	52.	E.
Valuation (Metropolis); to amend the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67.), by giving greater facilities for appeal to owners and lessees of houses paying rates and taxes in the place of the occupiers	5.	E.
Voters' Revision (County of Dublin). *See* County of Dublin Jurors' and Voters' Revision.		
Water Orders Confirmation:		
No. 1:		
—— for confirming certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70.), relating to Dyke District Water, Hoddesdon Water, and Thirsk District Water	xl.	E.
No. 2:		
—— to confirm certain similar Orders relating to Alperton and Sudbury Water, Market Weighton Water, Newmarket Water, and Wisbech Water	lxxix.	E.
—— *See also* Local Government Board's (Ireland) Orders Confirmation (*b*).		
Wood Green Congregational Church; for legalizing Marriages heretofore solemnized in the Wood Green Congregational Church, in the district of Edmonton (Middlesex)	xii.	E.
Yeomanry Pay, &c.; to make further provision with regard to the Pensions of Soldiers, and to the Pay and Pensions of the Yeomanry, and for other purposes	55.	E. & S.
Yorkshire Registries; to consolidate and amend the law relating to the Registration of Deeds and other matters affecting lands and hereditaments within the North, East, and West Ridings of the County of York	54.	E.

TABLES

SHOWING

THE EFFECT OF THE YEAR'S LEGISLATION.

TABLE A.—Acts of 47 & 48 Vict. (in order of Chapter), showing their effect on former Acts.
TABLE B.—Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 47 & 48 Vict.

(A.)

Acts of 47 & 48 Vict. (in order of Chapter), showing their effect on former Acts.

Ch.

1. *Mr. Speaker's Retirement* [U.K.]
   Settles an annuity of 4,000*l.* upon the Right Hon. Sir Henry Brand.

2. *National Debt* [U.K.]
   Repeals (upon the cancellation of the last remaining portion of the Indian Loan Annuity, 1881) s. 7 of 46 & 47 Vict. c. 54., National Debt Act, 1883, and also 44 & 45 Vict. c. 54., Indian Loan Act, 1881.
   Applies 46 & 47 Vict. c. 54.

3. *London Brokers' Relief* [E.]
   Amends 6 Anne, c. 16., Brokers (City of London).
   Amends 57 Geo. 3. c. lx., Gauger (City of London): Brokers.
   Amends 33 & 34 Vict. c. 60., London Brokers' Relief Act, 1870.

4. *Consolidated Fund* (No. 1) (11,817,505*l.* 14*s.* 10*d.*) [U.K.]

5. *Valuation (Metropolis) Amendment* [E.]
   Amends, and is construed with, 32 & 33 Vict. c. 67., Valuation (Metropolis) Act, 1869.

6. *Dublin Science and Art Museum* [I.]
   Amends 40 & 41 Vict. c. ccxxxiv., Dublin Science and Art Museum Act, 1877.
   Incorporates 8 & 9 Vict. c. 18., Lands Clauses Consolidation Act, 1845, &c.

7. *Isle of Man Harbours* [E.]
   Amends 35 & 36 Vict. c. 23, - - } Isle of Man Harbours Acts, 1872 and 1874.
   Amends 37 & 38 Vict. c. 8., }

Ch.

8. *Army (Annual)* [U.K.]
   Continues, and amends, 44 & 45 Vict. c 58, Army Act, 1881.

9. *Bankruptcy Appeals (County Courts)* [E.]
   Amends 46 & 47 Vict. c. 52, Bankruptcy Act, 1883.

10. *Trustee Churches (Ireland)* [I.]
    Amends 32 & 33 Vict. c. 42., Irish Church Act, 1869.

11. *Freshwater Fisheries* [E.]
    Amends and applies 41 & 42 Vict. c. 39., Freshwater Fisheries Act, 1878.
    Extends, explains, and applies 28 & 29 Vict. c. 121., Salmon Fishery Act, 1865.
    Extends and applies 36 & 37 Vict. c. 71., Salmon Fishery Act, 1873.
    Applies 39 & 40 Vict. c. 19., Salmon Fishery Act, 1876.
    Provides for application of this Act and of 41 & 42 Vict. c. 39. (with certain exceptions) to Norfolk and Suffolk.

12. *Public Health (Confirmation of Byelaws* [E.]
    Amends 38 & 39 Vict. c. 55., Public Health Act, 1875.
    Incorporates s. 128 of 10 & 11 Vict. c. 34., Towns Improvement Clauses Act, 1847.
    Incorporates s. 68 and s. 69 of 10 & 11 Vict. c. 89., Town Police Clauses Act, 1847.
    Incorporates s. 42 of 10 & 11 Vict c. 14., Markets and Fairs Clauses Act, 1847.

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.

13. *Contagious Diseases (Animals)* [U.K.]
Amends 41 & 42 Vict. c. 74., Contagious Diseases (Animals) Act, 1878.

14. *Married Women's Property* [E. & I.]
Amends 45 & 46 Vict. c. 75., Married Women's Property Act, 1882.

15. *Consolidated Fund (No. 2)* (6,519,368*l.*) [U.K.]

16. *Bankruptcy Frauds and Disabilities (Scotland* [S.]
Applies to Scotland certain provisions of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52.)
Applies 43 & 44 Vict. c. 34., Debtors (Scotland) Act, 1880.

17. *Metropolitan Police* [E.]
Provides for the appointment of an additional Assistant Commissioner of Police.
Amends and applies 19 & 20 Vict. c. 2., Metropolitan Police Act, 1856.
Amends and applies 31 & 32 Vict. c. 67., Police Rate Act, 1868.
Amends and applies 38 & 39 Vict. c. 28., Metropolitan Police Staff (Superannuation) Act, 1875.
Recites, in Schedule, Metropolitan Police Acts, 1829 to 1875.

18. *Settled Land* [E. & I.]
Amends 45 & 46 Vict. c. 38., Settled Land Act, 1882.

19. *Summary Jurisdiction over Children (Ireland)* [I.]
Amends Summary Jurisdiction (Ireland) Acts.
Extends certain enactments relative to appeals.
Recites, in Schedule, Indictable Offences which can be dealt with summarily.

20. *Greek Marriages* [E.]
Removes doubts as to validity of certain Greek Marriages.
Applies 21 & 22 Vict. c. 93., Legitimacy Declaration Act, 1858.

21. *Sea and Coast Fisheries Fund (Ireland)* [I.]
Transfers fund to Commissioners of Public Works in Ireland.
Incorporates certain provisions of 37 & 38 Vict. c. 86. and 45 & 46 Vict. c. 16. } Irish Reproductive Loan Fund Acts, 1874 and 1882.

Ch.

22. *Loans for Schools and Training Colleges (Ireland)* [I.]
Amends Law relating to Buildings of Non-vested National Schools, &c.
Applies Landed Property Improvement (Ireland) Acts, 10 & 11 Vict. c. 32., &c.

23. *National Debt (Conversion of Stock)* [U.K.]
Applies 33 & 34 Vict. c. 71., National Debt Act, 1870.
Extends 43 & 44 Vict. c. 36., Savings Banks Act, 1880.

24. *Colonial Attorneys Relief Act Amendment* [U.K.]
Amends 20 & 21 Vict. c. 39., Amends 37 & 38 Vict. c. 41., } Colonial Attorneys Relief Act.

25. *Customs and Inland Revenue* [U.K.]
Continues Import Duties on Tea (6*d.* the pound).
Grants duty of 15*s.* on licence for hackney carriage.
Reduces duties on carriages commenced to be used on or after the 1st October in any year.
Grants duties of income tax, and applies former Acts.

26. *Fisheries (Oyster, Crab, and Lobster) Act (1877) Amendment* [U.K.]
Amends 40 & 41 Vict. c. 42., Fisheries (Oyster, &c.) Act, 1877.

27. *Sea Fisheries* [U.K.]
Further amends 31 & 32 Vict. c. 45., Sea Fisheries Act, 1868.

28. *Tramways and Public Companies (Ireland)* [I.]
Amends 46 & 47 Vict. c. 43., Tramways and Public Companies (Ireland) Act, 1883.

29. *Licensing (Evidence)* [E. & I.]
Extends s. 41 of 35 & 36 Vict. c. 94., Licensing Act, 1872.

30. *Great Seal* [U.K.]
Repeals 27 Hen. 8. c. 11., Clerks of the Signet and Privy Seal.
Repeals 14 & 15 Vict. c. 82., Forms of Appointments to certain Offices, &c. under Great Seal.
Repeals s. 3 of 43 & 44 Vict. c. 10., Great Seal Act, 1880.
Applies 40 & 41 Vict. c. 41., Crown Office Act, 1877.

31. *Colonial Prisoners Removal* [U.K., &c.]
Applies 37 & 38 Vict. c. 27., Courts (Colonial) Jurisdiction Act, 1874.

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.
32. *Royal Military Asylum, Chelsea (Transfer)* [E.]
Transfers the Asylum from Commissioners of Woods to Commissioners of Works.

33. *Newcastle Chapter* [E.]
Recites 41 & 42 Vict. c. 68., Bishoprics Act, 1878.

34. *Elections (Hours of Poll)* [U.K.]
Applies 45 & 46 Vict. c. 50., Municipal Corporations Act, 1882.
Applies 3 & 4 Vict. c. 108., &c., Municipal Corporations (Ireland).

35. *County of Dublin Jurors' and Voters' Revision* [I.]
Applies provisions of Acts regulating registration of parliamentary voters in Counties in Ireland, &c.

36. *Prisons (Ireland)* [I.]
Amends 40 & 41 Vict. c. 49., General Prisons (Ireland) Act, 1877.

37. *Public Libraries* U.K.]
Amends 18 & 19 Vict. c. 70., Amends 29 & 30 Vict. c. 114., Amends 34 & 35 Vict. c. 71., Amends 40 & 41 Vict. c. 54., } Public Libraries (England) Acts, 1855 to 1877.
Amends 30 & 31 Vict. c. 37., Amends 34 & 35 Vict. c. 59., Amends 40 & 41 Vict. c. 54., } Public Libraries (Scotland) Acts, 1867 to 1877.
Amends 18 & 19 Vict. c. 40., Amends 40 & 41 Vict. c. 15., Amends 40 & 41 Vict. c. 54., } Public Libraries (Ireland) Acts, 1855 to 1877.

38. *Indian Marine Service* [U.K.]
Provides for the regulation of Her Majesty's Indian Marine Service.
Applies 24 & 25 Vict. c. 67., Indian Councils Act, 1861.

39. *Naval Discipline* [U.K.]
Amends 29 & 30 Vict. c. 109., Naval Discipline Act, 1866.
Applies 44 & 45 Vict. c. 58., Army Act, 1881.
Provides (in s. 7) for printing of Naval Discipline Act, 1866, as amended.

Ch.
39. *Naval Discipline*—cont.
Repeals (with savings) the following:
44 Geo. 3. c. 13., Desertion and Escape of Petty Officers, Seamen, and others from His Majesty's Service.
5 Geo. 4. c. 83. s. 16 in part, Punishment of Rogues and Vagabonds.
29 & 30 Vict. c. 109. in part, Discipline of the Navy.

40. *Reformatory and Industrial Schools (Manx Children)* [G.B.]
Applies 29 & 30 Vict. c. 117., Reformatory Schools Act, 1866.
Applies 29 & 30 Vict. c. 118., Applies 43 & 44 Vict. c. 15., } Industrial Schools Acts, 1866 and 1880.

41. *Building Societies* [U.K.]
Amends 37 & 38 Vict. c. 42., Building Societies Act, 1874.

42. *Sheriff Court Houses (Scotland)* [S.]
Amends 23 & 24 Vict. c. 79., Sheriff Court Houses (Scotland) Act, 1860.
Extends and applies Sheriff Court Houses (Scotland) Acts.

43. *Summary Jurisdiction* [E.]
Repeals (with proviso) the enactments contained in the Schedule. [*These enactments will be found in their chronological order in Table B. See p. 258, et seq.*]
Repeals obsolete punishments for non-payment of fines, &c.
Removes doubts as to application of Summary Jurisdiction Acts, and as to expression "court of summary jurisdiction."
Removes doubts, also, as to effect of s. 227 of 45 & 46 Vict. c. 50 (Municipal Corporations Act, 1882) on s. 38 of 42 & 43 Vict. c. 49. (Summary Jurisdiction Act, 1879), and as to effect of forms altered by rules made by the Lord Chancellor.
Applies 11 & 12 Vict. c. 43., Summary Jurisdiction Act, 1848.
Applies and extends 42 & 43 Vict. c. 49., Summary Jurisdiction Act, 1879.

44. *Naval Pensions* [U.K.]
Preamble recites Acts relating to Naval Pensions, &c.
Amends 28 & 29 Vict. c. 73., Naval and Marine Pay and Pensions Act, 1865.
Amends 28 & 29 Vict. c. 89., Greenwich Hospital Act, 1865.

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.

44. *Naval Pensions*—cont.
Repeals (so far as it relates to Greenwich out-pensioners) 19 & 20 Vict. c. 15., Greenwich and Chelsea Out-Pensioners.
Applies 28 & 29 Vict. cc. 73, 111, and 124. to Greenwich Hospital pensions.

45. *National School Teachers (Ireland)* [I.]
Amends 42 & 43 Vict. c. 74., National School Teachers (Ireland) Act, 1879.

46. *Naval Enlistment* [U.K.]
Amends 16 & 17 Vict. c. 69., Naval Enlistment Act, 1853.
Construes Act with Naval Enlistment Acts, 1835 and 1853.
Extends to Marines sections 16 and 21 of 16 & 17 Vict. c. 73., Naval Coast Volunteers.
Applies s. 91 of 44 & 45 Vict. c. 58. (Army Act, 1881).

47. *Contagious Diseases (Animals)—Transfer of Parts of Districts* [U.K.]
Amends 41 & 42 Vict. c. 74., Contagious Diseases (Animals) Act, 1878.

48. *Oyster Cultivation (Ireland)* [I.]
Extends powers of Inspectors of Irish Fisheries, under 32 & 33 Vict. c. 92. (Fisheries (Ireland) Act, 1869), to grant licenses for forming or planting oyster beds or layings.
Applies 7 & 8 Vict. c. 108., Fisheries (Ireland) Act, 1844.
Extends Act to mussels.

49. *Public Works Loans* [U.K.]
Grants 3,000,000*l.* for Public Works Loans, and 1,200,000*l.* for Public Works Loans in Ireland.
Grants 500,000*l.* to Irish Land Commission under 44 & 45 Vict. c. 49., Land Law (Ireland) Act, 1881, and under 46 & 47 Vict. c. 43., Tramways and Public Companies (Ireland) Act, 1883.
Applies 38 & 39 Vict. c. 89., Applies 42 & 43 Vict. c. 77., } Public Works Loans Acts, 1875 and 1879.
Applies 40 & 41 Vict. c. 27., Public Works Loans (Ireland) Act, 1877.

50. *Metropolitan Board of Works (Money)* [E.]
Amends, and applies, 46 & 47 Vict. c. 27., Metropolitan Board of Works (Money) Act, 1883.
Amends, and applies, 32 & 33 Vict. c. 102., Metropolitan Board of Works (Loans) Act, 1869.
Amends Acts regulating the sale of superfluous lands by the Board.

Ch.

50. *Metropolitan Board of Works (Money)*—cont.
Construes Act with Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and Metropolitan Board of Works (Money) Acts, 1875 to 1883.
Applies Main Drainage Acts.
,, 18 & 19 Vict. c. 120., Metropolis Management Act, 1855.
Empowers Board to expend moneys for purposes described in First Schedule.

51. *Prisons* [E.]
Removes doubts as to powers of Secretary of State in relation to altering, &c. of Prisons, under 40 & 41 Vict. c. 21., Prison Act, 1877.
Repeals sections 23 to 29 of 28 & 29 Vict. c. 126., Prison Act, 1865.

52. *Annual Turnpike Acts Continuance* [E.]
Continues certain Turnpike Acts, and repeals certain other Turnpike Acts, as set forth in Schedules 1 to 6.
Applies 23 & 24 Vict. c. 51., Applies 40 & 41 Vict. c. 66., } Local Taxation Returns Acts, 1860 and 1877.
Applies 38 & 39 Vict. c. 83., Local Loans Act, 1875.
Applies 41 & 42 Vict. c. 77., Highways and Locomotives (Amendment) Act, 1878.

53. *Expiring Laws Continuance* [U.K.]
Continues (as specified in Schedule) the following Acts, and enactments amending the same; viz.:—
5 & 6 Will. 4. c. 27., Linen, &c. Manufactures (Ireland).
3 & 4 Vict. c. 89., Poor Rates (Stock in Trade Exemption).
& 5 Vict. c. 35., Copyhold, Inclosure, and Tithe Commissioners (now Land Commissioners).
4 & 5 Vict. c. 59., Application of Highway Rates to Turnpike Roads.
10 & 11 Vict. c. 32., Landed Property Improvement (Ireland).
10 & 11 Vict. c. 98., Ecclesiastical Jurisdiction.
11 & 12 Vict. c. 32., County Cess (Ireland).
14 & 15 Vict. c. 104., Episcopal and Capitular Estates Management.
17 & 18 Vict. c. 102., Corrupt Practices Prevention.
23 & 24 Vict. c. 19., Dwellings for Labouring Classes (Ireland).
24 & 25 Vict. c. 109., Salmon Fishery (England).
26 & 27 Vict. c. 105., Promissory Notes.
27 & 28 Vict. c. 20., Promissory Notes, &c. (Ireland).
28 & 29 Vict. c. 46., Militia Ballots Suspension.
28 & 29 Vict. c. 83., Locomotives on Roads.
29 & 30 Vict. c. 52., Prosecution Expenses.
31 & 32 Vict. c. 125., Parliamentary Elections.
32 & 33 Vict. c. 21., Election Commissioners Expenses.
32 & 33 Vict. c. 56., Endowed Schools (Schemes).
34 & 35 Vict. c. 87., Sunday Observance Prosecutions.

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.

53. *Expiring Laws Continuance*—cont.

35 & 36 Vict. c. 33., Parliamentary and Municipal Elections (Ballot).
36 & 37 Vict. c. 48., Regulation of Railways.
38 & 39 Vict. c. 48., Police Expenses.
38 & 39 Vict. c. 84., Returning Officers Expenses.
39 & 40 Vict. c. 21., Juries (Ireland).
41 & 42 Vict. c. 41., Returning Officers Expenses (Scotland).
41 & 42 Vict. c. 72., Sale of Liquors on Sunday (Ireland).
43 Vict. c. 18., Parliamentary Elections.
46 & 47 Vict. c. 35., Diseases Prevention Metropolis.
46 & 47 Vict. c. 51., Corrupt and Illegal Practices Prevention.

54. *Yorkshire Registries* [E.]

Repeals (with proviso) the following Acts:—
2 & 3 Anne, c. 4., Registration of Deeds, &c. (W. R. York).
6 Anne, c. 20*., Inrolments of Bargains and Sales (W. R. York).
6 Anne, c. 62†., Registration of Deeds, &c. (E. R. York, &c.)
8 Geo. 2. c. 6., Registration of Deeds, &c. (N. R. York).
Applies 44 & 45 Vict. c. 41., Conveyancing and Law of Property Act, 1881.
Applies Inclosure Acts, 1845 to 1876.
Applies 27 & 28 Vict. c. 114., Improvement of Land Act, 1864.
Applies 45 & 46 Vict. c. 50., Municipal Corporations Act, 1882.

55. *Pensions and Yeomanry Pay* [E. & S.]

Repeals (with proviso) the following:—
44 Geo. 3. c. 54. in part, Yeomanry and Volunteers (Great Britain).
53 Geo. 3. c. 51., Relief of Widows of Military Officers from Stamp Duties on receipt of Pensions in Ireland.
7 Geo. 4. c. 58. s. 4., Yeomanry Cavalry and Volunteers (Great Britain).
19 & 20 Vict. c. 15‡., Payment of Greenwich and Chelsea Out-Pensioners.
31 & 32 Vict. c. 90. s. 2, Payments by Public Departments.
Removes doubts respecting recovery of certain penalties and sums of money under 44 Geo. 3. c. 54., Yeomanry Act, 1804.
Applies 44 & 45 Vict. c. 58., Army Act, 1881.

* 5 Anne, c. 18., in Ruffhead.
† c. 35. in Ruffhead.
‡ So far as the Act relates to Chelsea Out-Pensioners.

Ch.

Pensions and Yeomanry Pay—cont.

Applies in England, Summary Jurisdiction Acts, 42 & 43 Vict. c. 49., &c.
Applies in Scotland, 27 & 28 Vict. c. 53. and 44 & 45 Vict. c. 33., Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

56. *Chartered Companies* [U.K.]

Declares the law relating to the Incorporation of Chartered Companies under 1 Vict. c. 73.

57. *Superannuation* [U.K.]

Extends certain powers of Superannuation Act Amendment Act, 1873 (36 & 37 Vict. c. 23.)
Applies 22 Vict. c. 26., Superannuation Act, 1859.

58. *Prosecution of Offences* [E.]

Amends 42 & 43 Vict. c. 22., Prosecution of Offences Act, 1879.
Extends 39 & 40 Vict. c. 18., Treasury Solicitor Act, 1876.

59. *Cholera Hospitals (Ireland)* [I.]

Enables sanitary authorities in Ireland to take possession of land for the erection of temporary Cholera Hospitals.

60. *Metropolitan Asylum Board* [E.]

Enables the Managers of the Metropolitan Asylums District to borrow for certain purposes of the Diseases Prevention (Metropolis) Act, 1883 (46 & 47 Vict. c. 35.)
Applies 30 & 31 Vict. c. 6., Metropolitan Poor Act, 1867.

61. *Supreme Court of Judicature* [E.]

Amends Supreme Court of Judicature Acts (36 & 37 Vict. c. 66., &c.).
Amends 17 & 18 Vict. c. 34., Attendance of Witnesses.
Amends 39 & 40 Vict. c. 59., Appellate Jurisdiction Act, 1876.
Amends and applies 17 & 18 Vict. c. 125., Common Law Procedure Act, 1854.
Amends and extends 42 & 43 Vict. c. 78., Supreme Court of Judicature (Officers) Act, 1879.
Extends 13 & 14 Vict. c. 25., Justices of Assize.
Extends 18 & 19 Vict. c. 134., Court of Chancery, &c.
Extends and applies 36 & 37 Vict. c. 66., Supreme Court of Judicature Act, 1873.

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.

61. *Supreme Court of Judicature*—cont.
    Applies 4 & 5 Will. 4. c. 24., Pensions, Civil Offices.
    Applies 22 Vict. c. 26., Superannuation.
    Applies 44 & 45 Vict. c. 68., Supreme Court of Judicature Act, 1881.

62. *Revenue* [U.K.]
    Amends the Law relating to the Customs and Inland Revenue and to the Audit of Public Accounts.
    Repeals s. 111 and part of s. 142 of 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876.
    Amends and applies 43 & 44 Vict. c. 19., Taxes Management Act, 1880.
    Amends 30 & 31 Vict. c. 23., Customs and Inland Revenue Act, 1867.
    Amends 33 & 34 Vict. c. 97., Stamp Act, 1870.
    Amends 29 & 30 Vict. c. 39., Exchequer and Audit Departments Act, 1866.
    Construes Part I. of Act with Customs Consolidation Act, 1876, and Part I. of Revenue Act, 1883 (46 & 47 Vict. c. 55.)

63. *Trusts (Scotland)* [S.]
    Amends, extends, and construes Act with 24 & 25 Vict. c. 84., 26 & 27 Vict. c. 115., and 30 & 31 Vict. c. 97., Trusts (Scotland) Acts.
    Applies 30 & 31 Vict. c. 132., Trust Funds Act, 1867.

64. *Criminal Lunatics* [E. (Certain express provisions extend to Scotland and Ireland.)]
    Repeals (in whole or part) the following Acts:—
        3 & 4 Vict. c. 54., Confinement and Maintenance of Insane Prisoners.
        6 & 7 Vict. c. 26. s. 21, Millbank Prison.
        16 & 17 Vict. c. 96. s. 38 in part, Care and Treatment of Lunatics.
        23 & 24 Vict. c. 75. in part, Criminal Lunatic Asylums.
        25 & 26 Vict. c. 86. s. 15, Lunacy Regulation Act, 1862.
        27 & 28 Vict. c. 29., Confinement and Maintenance of Insane Prisoners.
        29 & 20 Vict. c. 109. in part, Naval Discipline Act, 1866.
        30 & 31 Vict. c. 12., Criminal Lunatics Act, 1867.
        32 & 33 Vict. c. 78., Criminal Lunatics Act, 1869.

Ch.

64. *Criminal Lunatics*—cont.
        44 & 45 Vict. c. 58. in part, Army Act, 1881.
        46 & 47 Vict. c. 38. in part, Trial of Lunatics Act, 1883.
    Applies 8 & 9 Vict. c. 100., Lunacy Act, 1845.
    Applies 16 & 17 Vict. c. 97., Lunatic Asylums Act, 1853.
    Applies 23 & 24 Vict. c. 75., Criminal Lunatic Asylums Act, 1860.
    Applies 25 & 26 Vict. c. 54., Lunacy (Scotland) Act, 1862.
    Applies 25 & 26 Vict. c. 86., Lunacy Regulation Act, 1862.
    Applies 38 & 39 Vict. c. 67., Lunatic Asylums (Ireland) Act, 1875.

65. *New Parishes Acts and Church Building Acts Amendment* [E.]
    Amends New Parishes Acts; viz., 6 & 7 Vict. c. 37., 7 & 8 Vict. c. 94., 19 & 20 Vict. c. 104., and 32 & 33 Vict. c. 94.
    Amends Church Building Acts; viz., 58 Geo. 3. c. 45., 59 Geo. 3. c. 134., 3 Geo. 4. c. 72., 5 Geo. 4. c. 103., 7 & 8 Geo. 4. c. 72., 1 & 2 Will. 4. c. 38., 2 & 3 Will. 4. c. 61., 1 & 2 Vict. 107., 2 & 3 Vict. c. 49., 3 & 4 Vict., c. 60., 7 & 8 Vict. c. 56., 8 & 9 Vict. c. 70., 9 & 10 Vict. c. 68., 11 & 12 Vict. c. 37., 14 & 15 Vict. c. 97., 17 & 18 Vict. c. 32., 19 & 20 Vict. c. 55., and 32 & 33 Vict. c. 94.

66. *Bishopric of Bristol* [E.]
    Provides for the disunion of the Sees of Gloucester and Bristol.
    Applies 41 & 42 Vict. c. 68., Bishoprics Act, 1878.

67. *Improvement of Lands (Ecclesiastical Benefices)* [E.]
    Applies 27 & 28 Vict. c. 114., Improvement of Land Act, 1864.

68. *Matrimonial Causes* [E.]
    Amends the Matrimonial Causes Acts with respect to the restitution of conjugal rights.

69. *Cholera, &c. Protection (Ireland)* [I.]
    Applies 41 & 42 Vict. c. 52., Public Health (Ireland) Act, 1878.
    Applies 46 & 47 Vict. c. 59., Epidemic and other Diseases Prevention Act, 1883.
    Applies Acts for Relief of Poor in Ireland.

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.
70. *Municipal Elections (Corrupt and Illegal Practices)* [E.]
Repeals s. 33 of 33 & 34 Vict. c. 75., Elementary Education Act, 1870.
Repeals in part, and applies, 45 & 46 Vict. c. 50., Municipal Corporations Act, 1882.
Applies 46 & 47 Vict. c. 51., Corrupt and Illegal Practices Prevention Act, 1883.
Applies 14 & 15 Vict. c. 105., Poor Law Amendment Act, 1851.
Applies 38 & 39 Vict. c. 55., Public Health Act, 1875.
Applies 5 & 6 Vict. c. 57., Poor Law Amendment Act, 1842.
Limits duration of Act to the end of the year 1886.
Sets forth (in Third Schedule) the enactments defining Corrupt Practices, Bribery, &c.

71. *Intestates Estates* [E. & I.]
Applies 39 & 40 Vict. c. 18., Treasury Solicitor Act, 1876.
Applies 15 & 16 Vict. c. 55., Trustee Act Extension.

72. *Disused Burial Grounds* [E.]
Prevents the erection of buildings on certain disused burial grounds affected by Orders in Council made in pursuance of 15 & 16 Vict. c. 85. and 16 & 17 Vict. c. 134., Burial of the Dead.

73. *Appropriation* [U.K.]

74. *Public Health (Officers)* [E.]
Amends 38 & 39 Vict. c. 55., Public Health Act, 1875.

75. *Canal Boats* [E.]
Amends 40 & 41 Vict. c. 60., Canal Boats Act, 1877.

76. *Post Office (Protection)* [U.K.]
Repeals 7 Will. 4. & 1 Vict. c. 36. in part, Post Office (Offences) Act, 1837.

Ch.
76. *Post Office (Protection)*—cont.
Repeals 3 & 4 Vict. c. 96. in part, Post Office (Duties) Act, 1840.
Repeals 38 & 39 Vict. c. 22. s. 10 in part, Post Office Act, 1875.
Repeals 42 & 43 Vict. c. 49. s. 53 in part, Summary Jurisdiction Act, 1879.
Repeals 44 & 45 Vict. c. 20. s. 7, Post Office (Land) Act, 1881.
Repeals 44 & 45 Vict. c. 33. s. 11 in part, Summary Jurisdiction (Scotland) Act, 1881.
Amends 41 & 42 Vict. c. 26., Parliamentary and Municipal Registration Act, 1878.
Applies 32 & 33 Vict. c. 73., Telegraph Act, 1869.
Applies 38 & 39 Vict. c. 22., Post Office Act, 1875.
Applies 7 Will. 4 & 1 Vict. c. 36., Post Office (Offences) Act, 1837.
Applies in England, Summary Jurisdiction (English) Acts, 42 & 43 Vict. c. 49., &c.
Applies in Scotland, 27 & 28 Vict. c. 53. and 44 & 45 Vict. c. 33., Summary Jurisdiction (Scotland) Acts, 1864 and 1881.
Applies in Ireland, 14 & 15 Vict. c. 93., Petty Sessions (Ireland) Act, 1851, &c.
Substitutes 32 & 33 Vict. c. 18. s. 1 in Telegraph Act, 1878, for 31 & 32 Vict. c. 119. s. 33.

77. *Public Health (Ireland)* [I.]
Amends 41 & 42 Vict. c. 52., Public Health (Ireland) Act, 1878.
Applies 34 & 35 Vict. c. 109., Local Government (Ireland) Act, 1871.

78. *Corrupt Practices (Suspension of Elections)* [E.]
Suspends elections for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich.

(B.)

Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 47 & 48 Vict.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 47 & 48 Vict.
27 Hen. 8. c. 11. - -	Clerks of the Signet and Privy Seal.	Repealed -	30
2 & 3 Anne, c. 4. - -	Registration of Deeds, &c. - -	Repealed -	54
6 Anne, c. 16. - -	Brokers (City of London) - -	Amended -	3
,, c. 20.* - -	Inrolment of Bargains and Sales -	Repealed -	54
,, c. 62.† - -	Registration of Deeds, &c. - -	Repealed -	54
8 Geo. 2. c. 6. - - -	Registration of Deeds, &c. - -	Repealed -	54
44 Geo. 3. c. 13. - -	Desertion, &c. of Seamen, &c. from His Majesty's Service.	Repealed -	39
,, c. 54. in part -	Yeomanry and Volunteers (Great Britain).	Repealed -	55
53 Geo. 3. c. 51. - -	Stamp Duties Exemptions (Ireland).	Repealed -	55
57 Geo. 3. c. lx. - -	Gauger (City of London): Brokers	Amended -	3
58 Geo. 3. c. 45. - -	Church Building - . -	Amended -	65
59 Geo. 3. c. 134. - -	Church Building - - -	Amended -	65
3 Geo. 4. c. 72. - -	Church Building - - -	Amended -	65
5 Geo. 4. c. 83. s. 16 in part -	Punishment of Rogues and Vagabonds.	Repealed -	39
,, c. 103. - -	Church Building - - -	Amended -	65
7 Geo. 4. c. 58. s. 4. - -	Yeomanry Cavalry and Volunteers (Great Britain).	Repealed -	55
7 & 8 Geo. 4. c. 72. - -	Church Building - - -	Amended -	65
1 & 2 Will. 4. c. 38. - -	Church Building - - -	Amended -	65
2 & 3 Will. 4. c. 61. - -	Church Building - - -	Amended -	65
7 Will. 4. & 1 Vict. c. 36. in part.	Post Office (Offences) Act, 1837 -	Repealed -	76
1 & 2 Vict. c. 107. - -	Church Building - - -	Amended -	65
2 & 3 Vict. c. 49. - -	Church Building - - -	Amended -	65
3 & 4 Vict. c. 54. - -	Insane Prisoners - - -	Repealed -	64
,, c. 60. - -	Church Building - - -	Amended -	65
,, c. 96. in part -	Post Office (Duties) Act, 1840 -	Repealed -	76
6 & 7 Vict. c. 26. s. 21. -	Millbank Prison - - -	Repealed -	64
,, c. 37. - -	New Parishes - - -	Amended -	65
7 & 8 Vict. c. 56. - -	Church Building - - -	Amended -	65
,, c. 94. - -	New Parishes - - -	Amended -	65
8 & 9 Vict. c. 70. - -	Church Building - - -	Amended -	65
9 & 10 Vict. c. 68. - -	Church Building - - -	Amended -	65
11 & 12 Vict. c. 37. - -	Church Building - - -	Amended -	65
14 & 15 Vict. c. 82. - -	Forms of Appointments, &c. (Great Seal).	Repealed -	30
,, c. 97. - -	Church Building - - -	Amended -	65
16 & 17 Vict. c. 69. - -	Naval Enlistment Act, 1853 -	Amended -	46
,, c. 96. s. 38. in part.	Care and Treatment of Lunatics -	Repealed -	64
17 & 18 Vict. c. 32. - -	Church Building - - -	Amended -	65

* 5 Anne, c. 18., in Ruffhead.
† c. 35. in Ruffhead.

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 47 & 48 Vict.
17 & 18 Vict. c. 34. - -	Attendance of Witnesses - -	Amended -	61
,, c. 125. - -	Common Law Procedure Act, 1854	Amended -	61
18 & 19 Vict. c. 40. - -	Public Libraries (Ireland) - -	Amended -	37
,, c. 70. - -	Public Libraries (England)- -	Amended -	37
19 & 20 Vict. c. 2. - -	Metropolitan Police - -	Amended -	17
,, c. 15. - -	Greenwich and Chelsea Out-Pensioners.	Repealed*-	44 and 55
,, c. 55. - -	Church Building - - -	Amended -	65
,, c. 104. - -	New Parishes - - -	Amended -	65
20 & 21 Vict. c. 39., } 37 & 38 Vict. c. 41., } -	Colonial Attorneys Relief Act -	Amended -	24
23 & 24 Vict. c. 75. in part -	Criminal Lunatic Asylums -	Repealed -	64
,, c. 79. - -	Sheriff Court Houses (Scotland) -	Amended -	42
24 & 25 Vict. c. 84. - -	Trusts (Scotland) - - -	Amended -	63
25 & 26 Vict. c. 86. s. 15. -	Lunacy Regulation Act, 1862 -	Repealed -	64
26 & 27 Vict. c. 115. - -	Trusts (Scotland) - - -	Amended -	63
27 & 28 Vict. c. 29. - -	Insane Prisoners - - -	Repealed -	64
28 & 29 Vict. c. 73. - -	Naval and Marine Pay and Pensions.	Amended -	44
,, c. 89. - -	Greenwich Hospital - -	Amended -	44
,, c. 126. ss. 23 to 29.	Prison Act, 1865 - - -	Repealed -	51
29 & 30 Vict. c. 39. - -	Exchequer and Audit Departments Act, 1866.	Amended -	62
,, c. 109. - -	Naval Discipline Act, 1866 -	Amended -	39 and 64
,, c. 114. - -	Public Libraries (England) -	Amended -	37
30 & 31 Vict. c. 12. - -	Criminal Lunatics Act, 1867 -	Repealed -	64
,, c. 23. - -	Customs and Inland Revenue Act, 1867.	Amended -	62
,, c. 37. - -	Public Libraries (Scotland) -	Amended -	37
,, c. 97. - -	Trusts (Scotland) - - -	Amended -	63
31 & 32 Vict. c. 45. - -	Sea Fisheries Act, 1868 - -	Amended -	27
,, c. 67. - -	Police Rate Act, 1868 - -	Amended -	17
,, c. 90. s. 2. -	Payments by Public Departments -	Repealed -	55
32 & 33 Vict. c. 42. - -	Irish Church Act, 1869 - -	Amended -	10
,, c. 67. - -	Valuation (Metropolis) Act, 1869 -	Amended -	5
,, c. 78. - -	Criminal Lunatics Act, 1869 -	Repealed -	64
,, c. 94. - -	New Parishes, &c. - - -	Amended -	65
,, c. 102. - -	Metropolitan Board of Works, (Loans) Act, 1869.	Amended -	50
33 & 34 Vict. c. 60. - -	London Brokers' Relief Act, 1870 -	Amended -	3
,, c. 75. s. 35. -	Elementary Education Act, 1870 -	Repealed -	70
,, c. 97. - -	Stamp Act, 1870 - - -	Amended -	62
34 & 35 Vict. c. 59. - -	Public Libraries (Scotland) - -	Amended -	37
,, c. 71. - -	Public Libraries (England) - -	Amended -	37
35 & 36 Vict. c. 23. - -	Isle of Man Harbours Act, 1872 -	Amended -	7
36 & 37 Vict. c. 66., &c. -	Supreme Court of Judicature Acts	Amended -	61
37 & 38 Vict. c. 8. - -	Isle of Man Harbours Act, 1874 -	Amended -	7
,, c. 42. - -	Building Societies - - -	Amended -	41
38 & 39 Vict. c. 22. s. 10 in part.	Post Office Act, 1875 - -	Repealed -	76

* By chapter 44 so far as the Act relates to Greenwich out-pensioners, and by chapter 55 so far as it relates to Chelsea out-pensioners.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 47 & 48 Vict.
38 & 39 Vict. c. 28. - -	Metropolitan Police Staff (Superannuation) Act, 1875.	Amended -	17
,, c. 55. - -	Public Health Act, 1875 - -	Amended -	12 and 74
39 & 40 Vict. c. 36. s. 111., and part of s. 142.	Customs Consolidation Act, 1876 -	Repealed -	62
,, c. 59. - -	Appellate Jurisdiction Act, 1876 -	Amended -	61
40 & 41 Vict. c. 15. - -	Public Libraries (Ireland) - -	Amended -	37
,, c. 42. - -	Fisheries (Oyster, &c.) Act, 1877 -	Amended -	26
,, c. 49. - -	General Prisons (Ireland) Act, 1877	Amended -	36
,, c. 54. - -	Public Libraries - - -	Amended -	37
,, c. 60. - -	Canal Boats Act, 1877 - -	Amended -	75
,, c. ccxxxiv. -	Dublin Science and Art Museum Act, 1877..	Amended -	6
41 & 42 Vict. c. 26. - -	Parliamentary and Municipal Registration Act, 1878.	Amended -	76
,, c. 39. - -	Freshwater Fisheries Act, 1878 -	Amended -	11
,, c. 52. - -	Public Health (Ireland) Act, 1878 -	Amended -	77
,, c. 74. - -	Contagious Diseases (Animals) Act, 1878.	Amended -	13 and 47
42 & 43 Vict. c. 22. - -	Prosecution of Offences Act, 1879 -	Amended -	58
,, c. 49. s. 53. in part.	Summary Jurisdiction Act, 1879 -	Repealed -	76
,, c. 74. - -	National School Teachers (Ireland)	Amended -	45
,, c. 78. - -	Supreme Court of Judicature (Officers) Act, 1879.	Amended -	61
43 & 44 Vict. c. 10. s. 3. -	Great Seal Act, 1880 - -	Repealed -	30
,, c. 19. - -	Taxes Management Act, 1880 -	Amended -	62
44 & 45 Vict. c. 20. s. 7. -	Post Office (Land) Act, 1881 -	Repealed -	76
,, c. 33. s. 11. in part.	Summary Jurisdiction (Scotland) Act, 1881.	Repealed -	76
,, c. 54. - -	Indian Loan Act, 1881 - -	Repealed -	2
,, c. 58. - -	Army Act, 1881 - - -	Amended -	8 and 64
45 & 46 Vict. c. 38. - -	Settled Land Act, 1882 - -	Amended -	18
,, c. 50. in part -	Municipal Corporations Act, 1882 -	Repealed -	70
,, c. 75. - -	Married Women's Property Act, 1882.	Amended -	14
46 & 47 Vict. c. 27. - -	Metropolitan Board of Works (Money) Act, 1883.	Amended -	50
,, c. 38. in part -	Trial of Lunatics Act, 1883 -	Repealed -	64
,, c. 43. - -	Tramways and Public Companies (Ireland) Act, 1883.	Amended -	28
,, c. 52. - -	Bankruptcy Act, 1883 - -	Amended -	9
,, c. 54. s. 7. -	National Debt Act, 1883 - -	Repealed -	2

Table B.—Acts of former Sessions repealed and amended—*continued*.

Enactments repealed by the Summary Jurisdiction Act, 47 & 48 *Vict. c.* 43.

(This Schedule down to the year 1868 refers to the Statutes, Revised Edition published by authority under the direction of the Statute Law Committee.)

Act repealed by 47 & 48 Vict. c. 43.	Subject-matter of Act repealed.
3 Will. & Mar. c. 11. s. 9. in pt.	Settlement of the Poor.
7 & 8 Will. 3. c. 6. in pt. -	More easy Recovery of small Tythes.
1 Anne, Stat. 2, c. 22. ss. 1. and 4. in pt.	Abuses and Frauds in Woollen, &c. and Iron Manufactures.
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41 Geo. 3. c. 109. s. 39., in pt. (U.K.)	Inclosure Acts Consolidation.

Table B.—Acts of former Sessions repealed and amended—*continued*.

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54 Geo. 3. c. 159. in pt. -	Regulation of Ports, Harbours, &c. in United Kingdom, and of His Majesty's Docks, &c. therein.
55 Geo. 3. c. 137. ss. 8. and 9. in pt.	Embezzling Property by Poor Persons in Workhouses. Poor Relief.
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57 Geo. 3. c. 19. in pt. -	Preventing Seditious Meetings and Assemblies.
,, c. 93. in pt. -	Costs of Distresses levied for Payment of Small Rents.
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Table B.—Acts of former Sessions repealed and amended—*continued*.

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Table B.—Acts of former Sessions repealed and amended—*continued.*

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Table B.—Acts of former Sessions repealed and amended—*continued.*

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42 & 43 Vict. c. 49. ss. 31. and 32. in pt.	Summary Jurisdiction Act, 1879.
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The Statutes are completed, with Index, in the October Number; and the Title-page is printed in its proper place, and will be found in the June Number.

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The General Title-pages for the Chancery Division Volume, and for the Queen's Bench Division Volume, respectively, are in this Number at the end thereof.

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THE

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TABLE A.—Acts of 47 & 48 Vict. (in order of Chapter), showing their effect on former Acts.
TABLE B.—Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 47 & 48 Vict.

(A.)

Acts of 47 & 48 Vict. (in order of Chapter), showing their effect on former Acts.

Ch.

1. *Mr. Speaker's Retirement* [U.K.]
   Settles an annuity of 4,000*l.* upon the Right Hon. Sir Henry Brand.

2. *National Debt* [U.K.]
   Repeals (upon the cancellation of the last remaining portion of the Indian Loan Annuity, 1881) s. 7 of 46 & 47 Vict. c. 54., National Debt Act, 1883, and also 44 & 45 Vict. c. 54., Indian Loan Act, 1881.
   Applies 46 & 47 Vict. c. 54.

3. *London Brokers' Relief* [E.]
   Amends 6 Anne, c. 16., Brokers (City of London).
   Amends 57 Geo. 3. c. lx., Gauger (City of London): Brokers.
   Amends 33 & 34 Vict. c. 60., London Brokers' Relief Act, 1870.

4. *Consolidated Fund* (No. 1)
   (11,817,505*l.* 14*s.* 10*d.*) [U.K.]

5. *Valuation (Metropolis) Amendment* [E.]
   Amends, and is construed with, 32 & 33 Vict. c. 67., Valuation (Metropolis) Act, 1869.

6. *Dublin Science and Art Museum* [I.]
   Amends 40 & 41 Vict. c. ccxxxiv., Dublin Science and Art Museum Act, 1877.
   Incorporates 8 & 9 Vict. c. 18., Lands Clauses Consolidation Act, 1845, &c.

7. *Isle of Man Harbours* [E.]
   Amends 35 & 36 Vict. c. 23, - - } Isle of Man Harbours Acts, 1872 and 1874.
   Amends 37 & 38 Vict. c. 8., }

Ch.

8. *Army (Annual)* [U.K.]
   Continues, and amends, 44 & 45 Vict. c 58, Army Act, 1881.

9. *Bankruptcy Appeals (County Courts)* [E.]
   Amends 46 & 47 Vict. c. 52, Bankruptcy Act, 1883.

10. *Trustee Churches (Ireland)* [I.]
    Amends 32 & 33 Vict. c. 42., Irish Church Act, 1869.

11. *Freshwater Fisheries* [E.]
    Amends and applies 41 & 42 Vict. c. 39., Freshwater Fisheries Act, 1878.
    Extends, explains, and applies 28 & 29 Vict. c. 121., Salmon Fishery Act, 1865.
    Extends and applies 36 & 37 Vict. c. 71., Salmon Fishery Act, 1873.
    Applies 39 & 40 Vict. c. 19., Salmon Fishery Act, 1876.
    Provides for application of this Act and of 41 & 42 Vict. c. 39. (with certain exceptions) to Norfolk and Suffolk.

12. *Public Health (Confirmation of Byelaws* [E.]
    Amends 38 & 39 Vict. c. 55., Public Health Act, 1875.
    Incorporates s. 128 of 10 & 11 Vict. c. 34., Towns Improvement Clauses Act, 1847.
    Incorporates s. 68 and s. 69 of 10 & 11 Vict. c. 89., Town Police Clauses Act, 1847.
    Incorporates s. 42 of 10 & 11 Vict c. 14., Markets and Fairs Clauses Act, 1847.

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Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.

32. *Royal Military Asylum, Chelsea (Transfer)* [E.]
Transfers the Asylum from Commissioners of Woods to Commissioners of Works.

33. *Newcastle Chapter* [E.]
Recites 41 & 42 Vict. c. 68., Bishoprics Act, 1878.

34. *Elections (Hours of Poll)* [U.K.]
Applies 45 & 46 Vict. c. 50., Municipal Corporations Act, 1882.
Applies 3 & 4 Vict. c. 108., &c., Municipal Corporations (Ireland).

35. *County of Dublin Jurors' and Voters' Revision* [I.]
Applies provisions of Acts regulating registration of parliamentary voters in Counties in Ireland, &c.

36. *Prisons (Ireland)* [I.]
Amends 40 & 41 Vict. c. 49., General Prisons (Ireland) Act, 1877.

37. *Public Libraries* U.K.]
Amends 18 & 19 Vict. c. 70., Amends 29 & 30 Vict. c. 114., Amends 34 & 35 Vict. c. 71., Amends 40 & 41 Vict. c. 54., } Public Libraries (England) Acts, 1855 to 1877.
Amends 30 & 31 Vict. c. 37., Amends 34 & 35 Vict. c. 59., Amends 40 & 41 Vict. c. 54., } Public Libraries (Scotland) Acts, 1867 to 1877.
Amends 18 & 19 Vict. c. 40., Amends 40 & 41 Vict. c. 15., Amends 40 & 41 Vict. c. 54., } Public Libraries (Ireland) Acts, 1855 to 1877.

38. *Indian Marine Service* [U.K.]
Provides for the regulation of Her Majesty's Indian Marine Service.
Applies 24 & 25 Vict. c. 67., Indian Councils Act, 1861.

39. *Naval Discipline* [U.K.]
Amends 29 & 30 Vict. c. 109., Naval Discipline Act, 1866.
Applies 44 & 45 Vict. c. 58., Army Act, 1881.
Provides (in s. 7) for printing of Naval Discipline Act, 1866, as amended.

Ch.

39. *Naval Discipline*—cont.
Repeals (with savings) the following :
44 Geo. 3. c. 13., Desertion and Escape of Petty Officers, Seamen, and others from His Majesty's Service.
5 Geo. 4. c. 83. s. 16 in part. Punishment of Rogues and Vagabonds.
29 & 30 Vict. c. 109. in part, Discipline of the Navy.

40. *Reformatory and Industrial Schools (Manx Children)* [G.B.]
Applies 29 & 30 Vict. c. 117., Reformatory Schools Act, 1866.
Applies 29 & 30 Vict. c. 118., Applies 43 & 44 Vict. c. 15., } Industrial Schools Acts, 1866 and 1880.

41. *Building Societies* [U.K.]
Amends 37 & 38 Vict. c. 42., Building Societies Act, 1874.

42. *Sheriff Court Houses (Scotland)* [S.]
Amends 23 & 24 Vict. c. 79., Sheriff Court Houses (Scotland) Act, 1860.
Extends and applies Sheriff Court Houses (Scotland) Acts.

43. *Summary Jurisdiction* [E.]
Repeals (with proviso) the enactments contained in the Schedule. [*These enactments will be found in their chronological order in Table B. See p. 258, et seq.*]
Repeals obsolete punishments for non-payment of fines, &c.
Removes doubts as to application of Summary Jurisdiction Acts, and as to expression "court of summary jurisdiction."
Removes doubts, also, as to effect of s. 227 of 45 & 46 Vict. c. 50 (Municipal Corporations Act, 1882) on s. 38 of 42 & 43 Vict. c. 49. (Summary Jurisdiction Act, 1879), and as to effect of forms altered by rules made by the Lord Chancellor.
Applies 11 & 12 Vict. c. 43., Summary Jurisdiction Act, 1848.
Applies and extends 42 & 43 Vict. c. 49., Summary Jurisdiction Act, 1879.

44. *Naval Pensions* [U.K.]
Preamble recites Acts relating to Naval Pensions, &c.
Amends 28 & 29 Vict. c. 73., Naval and Marine Pay and Pensions Act, 1865.
Amends 28 & 29 Vict. c. 89., Greenwich Hospital Act, 1865.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 47 & 48 Vict.
38 & 39 Vict. c. 28. - -	Metropolitan Police Staff (Superannuation) Act, 1875.	Amended -	17
,, c. 55. - -	Public Health Act, 1875 - -	Amended -	12 and 74
39 & 40 Vict. c. 36. s. 111., and part of s. 142.	Customs Consolidation Act, 1876 -	Repealed -	62
,, c. 59. - -	Appellate Jurisdiction Act, 1876 -	Amended -	61
40 & 41 Vict. c. 15. - -	Public Libraries (Ireland) - -	Amended -	37
,, c. 42. - -	Fisheries (Oyster, &c.) Act, 1877 -	Amended -	26
,, c. 49. - -	General Prisons (Ireland) Act, 1877	Amended -	36
,, c. 54. - -	Public Libraries - - -	Amended -	37
,, c. 60. - -	Canal Boats Act, 1877 - -	Amended -	75
,, c. ccxxxiv. -	Dublin Science and Art Museum Act, 1877..	Amended -	6
41 & 42 Vict. c. 26. - -	Parliamentary and Municipal Registration Act, 1878.	Amended -	76
,, c. 39. - -	Freshwater Fisheries Act, 1878 -	Amended -	11
,, c. 52. - -	Public Health (Ireland) Act, 1878 -	Amended -	77
,, c. 74. - -	Contagious Diseases (Animals) Act, 1878.	Amended -	13 and 47
42 & 43 Vict. c. 22. - -	Prosecution of Offences Act, 1879 -	Amended -	58
,, c. 49. s. 53. in part.	Summary Jurisdiction Act, 1879 -	Repealed -	76
,, c. 74. - -	National School Teachers (Ireland)	Amended -	45
,, c. 78. - -	Supreme Court of Judicature (Officers) Act, 1879.	Amended -	61
43 & 44 Vict. c. 10. s. 3. -	Great Seal Act, 1880 - -	Repealed -	30
,, c. 19. - -	Taxes Management Act, 1880 -	Amended -	62
44 & 45 Vict. c. 20. s. 7. -	Post Office (Land) Act, 1881 -	Repealed -	76
,, c. 33. s. 11. in part.	Summary Jurisdiction (Scotland) Act, 1881.	Repealed -	76
,, c. 54. - -	Indian Loan Act, 1881 - -	Repealed -	2
,, c. 58. - -	Army Act, 1881 - - -	Amended -	8 and 64
45 & 46 Vict. c. 38. - -	Settled Land Act, 1882 - -	Amended -	18
,, c. 50. in part -	Municipal Corporations Act, 1882 -	Repealed -	70
,, c. 75. - -	Married Women's Property Act, 1882.	Amended -	14
46 & 47 Vict. c. 27. - -	Metropolitan Board of Works (Money) Act, 1883.	Amended -	50
,, c. 38. in part -	Trial of Lunatics Act, 1883 -	Repealed -	64
,, c. 43. - -	Tramways and Public Companies (Ireland) Act, 1883.	Amended -	28
,, c. 52. - -	Bankruptcy Act, 1883 - -	Amended -	9
,, c. 54. s. 7. -	National Debt Act, 1883 - -	Repealed -	2

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.

53. *Expiring Laws Continuance*—cont.

35 & 36 Vict. c. 33., Parliamentary and Municipal Elections (Ballot).
36 & 37 Vict. c. 48., Regulation of Railways.
38 & 39 Vict. c. 48., Police Expenses.
38 & 39 Vict. c. 84., Returning Officers Expenses.
39 & 40 Vict. c. 21., Juries (Ireland).
41 & 42 Vict. c. 41., Returning Officers Expenses (Scotland).
41 & 42 Vict. c. 72., Sale of Liquors on Sunday (Ireland).
43 Vict. c. 18., Parliamentary Elections.
46 & 47 Vict. c. 35., Diseases Prevention Metropolis.
46 & 47 Vict. c. 51., Corrupt and Illegal Practices Prevention.

54. *Yorkshire Registries* [E.]

Repeals (with proviso) the following Acts:—
2 & 3 Anne, c. 4., Registration of Deeds, &c. (W. R. York).
6 Anne, c. 20*., Inrolments of Bargains and Sales (W. R. York).
6 Anne, c. 62†., Registration of Deeds, &c. (E. R. York, &c.)
8 Geo. 2. c. 6., Registration of Deeds, &c. (N. R. York).

Applies 44 & 45 Vict. c. 41., Conveyancing and Law of Property Act, 1881.

Applies Inclosure Acts, 1845 to 1876.

Applies 27 & 28 Vict. c. 114., Improvement of Land Act, 1864.

Applies 45 & 46 Vict. c. 50., Municipal Corporations Act, 1882.

55. *Pensions and Yeomanry Pay* [E. & S.]

Repeals (with proviso) the following:—
44 Geo. 3. c. 54. in part, Yeomanry and Volunteers (Great Britain).
53 Geo. 3. c. 51., Relief of Widows of Military Officers from Stamp Duties on receipt of Pensions in Ireland.
7 Geo. 4. c. 58. s. 4., Yeomanry Cavalry and Volunteers (Great Britain).
19 & 20 Vict. c. 15‡., Payment of Greenwich and Chelsea Out-Pensioners.
31 & 32 Vict. c. 90. s. 2, Payments by Public Departments.

Removes doubts respecting recovery of certain penalties and sums of money under 44 Geo. 3. c. 54., Yeomanry Act, 1804.

Applies 44 & 45 Vict. c. 58., Army Act, 1881.

* 5 Anne, c. 18., in Ruffhead.
† c. 35. in Ruffhead.
‡ So far as the Act relates to Chelsea Out-Pensioners.

Ch.

Pensions and Yeomanry Pay—cont.

Applies in England, Summary Jurisdiction Acts, 42 & 43 Vict. c. 49., &c.

Applies in Scotland, 27 & 28 Vict. c. 53. and 44 & 45 Vict. c. 33., Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

56. *Chartered Companies* [U.K.]

Declares the law relating to the Incorporation of Chartered Companies under 1 Vict. c. 73.

57. *Superannuation* [U.K.]

Extends certain powers of Superannuation Act Amendment Act, 1873 (36 & 37 Vict. c. 23.)

Applies 22 Vict. c. 26., Superannuation Act, 1859.

58. *Prosecution of Offences* [E.]

Amends 42 & 43 Vict. c. 22., Prosecution of Offences Act, 1879.

Extends 39 & 40 Vict. c. 18., Treasury Solicitor Act, 1876.

59. *Cholera Hospitals (Ireland)* [I.]

Enables sanitary authorities in Ireland to take possession of land for the erection of temporary Cholera Hospitals.

60. *Metropolitan Asylum Board* [E.]

Enables the Managers of the Metropolitan Asylums District to borrow for certain purposes of the Diseases Prevention (Metropolis) Act, 1883 (46 & 47 Vict. c. 35.)

Applies 30 & 31 Vict. c. 6., Metropolitan Poor Act, 1867.

61. *Supreme Court of Judicature* [E.]

Amends Supreme Court of Judicature Acts (36 & 37 Vict. c. 66., &c.).

Amends 17 & 18 Vict. c. 34., Attendance of Witnesses.

Amends 39 & 40 Vict. c. 59., Appellate Jurisdiction Act, 1876.

Amends and applies 17 & 18 Vict. c. 125., Common Law Procedure Act, 1854.

Amends and extends 42 & 43 Vict. c. 78., Supreme Court of Judicature (Officers) Act, 1879.

Extends 13 & 14 Vict. c. 25., Justices of Assize.

Extends 18 & 19 Vict. c. 134., Court of Chancery, &c.

Extends and applies 36 & 37 Vict. c. 66., Supreme Court of Judicature Act, 1873.

Table A.—Acts of 47 & 48 Vict. (in order of Chapter), &c.—*continued.*

Ch.

61. *Supreme Court of Judicature*—cont.
Applies 4 & 5 Will. 4. c. 24., Pensions, Civil Offices.
Applies 22 Vict. c. 26., Superannuation.
Applies 44 & 45 Vict. c. 68., Supreme Court of Judicature Act, 1881.

62. *Revenue* [U.K.]
Amends the Law relating to the Customs and Inland Revenue and to the Audit of Public Accounts.
Repeals s. 111 and part of s. 142 of 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876.
Amends and applies 43 & 44 Vict. c. 19., Taxes Management Act, 1880.
Amends 30 & 31 Vict. c. 23., Customs and Inland Revenue Act, 1867.
Amends 33 & 34 Vict. c. 97., Stamp Act, 1870.
Amends 29 & 30 Vict. c. 39., Exchequer and Audit Departments Act, 1866.
Construes Part I. of Act with Customs Consolidation Act, 1876, and Part I. of Revenue Act, 1883 (46 & 47 Vict. c. 55.)

63. *Trusts (Scotland)* [S.]
Amends, extends, and construes Act with 24 & 25 Vict. c. 84., 26 & 27 Vict. c. 115., and 30 & 31 Vict. c. 97., Trusts (Scotland) Acts.
Applies 30 & 31 Vict. c. 132., Trust Funds Act, 1867.

64. *Criminal Lunatics* [E. (Certain express provisions extend to Scotland and Ireland.)]
Repeals (in whole or part) the following Acts:—
3 & 4 Vict. c. 54., Confinement and Maintenance of Insane Prisoners.
6 & 7 Vict. c. 26. s. 21, Millbank Prison.
16 & 17 Vict. c. 96. s. 38 in part, Care and Treatment of Lunatics.
23 & 24 Vict. c. 75. in part, Criminal Lunatic Asylums.
25 & 26 Vict. c. 86. s. 15, Lunacy Regulation Act, 1862.
27 & 28 Vict. c. 29., Confinement and Maintenance of Insane Prisoners.
29 & 20 Vict. c. 109. in part, Naval Discipline Act, 1866.
30 & 31 Vict. c. 12., Criminal Lunatics Act, 1867.
32 & 33 Vict. c. 78., Criminal Lunatics Act, 1869.

Ch.

64. *Criminal Lunatics*—cont.
44 & 45 Vict. c. 58. in part, Army Act, 1881.
46 & 47 Vict. c. 38. in part, Trial of Lunatics Act, 1883.
Applies 8 & 9 Vict. c. 100., Lunacy Act, 1845.
Applies 16 & 17 Vict. c. 97., Lunatic Asylums Act, 1853.
Applies 23 & 24 Vict. c. 75., Criminal Lunatic Asylums Act, 1860.
Applies 25 & 26 Vict. c. 54., Lunacy (Scotland) Act, 1862.
Applies 25 & 26 Vict. c. 86., Lunacy Regulation Act, 1862.
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65. *New Parishes Acts and Church Building Acts Amendment* [E.]
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Applies 46 & 47 Vict. c. 59., Epidemic and other Diseases Prevention Act, 1883.
Applies Acts for Relief of Poor in Ireland.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 47 & 48 Vict. c. 43.	Subject-matter of Act repealed.
6 & 7 Vict. c. 30. in pt. -	Pound-breach and Rescue.
,, c. 40. in pt. -	Frauds and Abuses in Woollen, &c. Manufacturers.
,, c. 68. s. 19. in pt.	Regulating Theatres.
7 & 8 Vict. c. 101. s. 4. in pt.	Poor Law Amendment.
,, c. 87. ss. 7. and 9. in pt.	Slaughtering Horses.
8 & 9 Vict. c. 10. s. 3. -	Bastardy, Law of.
,, c. 16. in pt. -	Companies Clauses Consolidation Act, 1845.
,, c. 18. in pt. -	Lands Clauses Consolidation Act, 1845.
,, c. 20. in pt. -	Railways Clauses Consolidation Act, 1845.
,, c. 77. in pt. -	Masters and Workmen (Hosiery).
,, c. 100. in pt. -	Care and Treatment of Lunatics.
,, c. 109. ss. 11. and 20. in pt.	Games and Wagers.
9 & 10 Vict. c. 95. in pt. -	Small Debts, for the more easy Recovery of.
10 & 11 Vict. c. 16. s. 71. in pt.	Commissioners Clauses Act, 1847.
,, c. 38. ss. 16. and 17.	Drainage of Land (England and Wales).
,, c. 62. in pt. -	Naval Prisons. Desertion from the Navy.
11 & 12 Vict. c. 43. in pt. -	Justice, Administration of.
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,, c. 66. s. 22. in pt.	Gas, Sale of.
23 & 24 Vict. c. 32. s. 4. in pt.	Ecclesiastical Courts Jurisdiction.
24 & 25 Vict. c. 96. in pt. -	Larceny Act, 1861.
,, c. 97. in pt. -	Malicious Injuries to Property.
,, c. 99. s. 32. in pt.	Coinage Offences.
,, c. 110. s. 11. in. pt.	Old Metal Dealers Act, 1861.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 47 & 48 Vict. c. 43.	Subject-matter of Act repealed.
25 & 26 Vict. c. 61. s. 47. in pt.	Highways (England).
,, c. 114. ss. 5. and 6. in pt.	Prevention of Poaching.
26 & 27 Vict. c. 65. s. 48. in pt.	Volunteer Act, 1863.
,, c. 103. in pt.	Misappropriation by Servants.
28 & 29 Vict. c. 121. s. 66. in pt.	Salmon Fishery Act, 1865.
31 & 32 Vict. c. 45. s. 58. in pt.	Sea Fisheries Act, 1868.
32 & 33 Vict. c. 112. s. 6. in pt.	Adulteration of Seeds Act, 1869.
34 & 35 Vict. c. 31. s. 20. in pt.	Trade Union Act, 1871.
,, c. 105. s. 15. in pt.	Petroleum Act, 1871.
,, c. 112. s. 17. in pt.	Prevention of Crime Act, 1871.
35 & 36 Vict. c. 38. s. 11. in pt.	Infant Life Protection Act, 1872.
,, c. 50. s. 6. in. pt.	Railway Rolling Stock Protection Act, 1872.
,, c. 76. ss. 61. and 63. in pt.	Coal Mines Regulation Act, 1872.
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,, c. 93. s. 52. in pt., and s. 54.	Pawnbrokers Act, 1872.
,, c. 94. in pt. -	Licensing Act, 1872.
36 & 37 Vict. c. 77. in pt. -	Naval Artillery Volunteer Act, 1873.
,, c. 86. s. 24. in pt.	Elementary Education Act, 1873.
37 & 38 Vict. c. 67. s. 6. in pt.	Slaughter-houses, &c. (Metropolis) Act, 1874.
38 & 39 Vict. c. 17. s. 93. in pt.	Explosives Act, 1875.
,, c. 55. s. 252. and s. 269. in pt.	Public Health Act, 1875.
,, c. 60. s. 33. in pt.	Friendly Societies Act, 1875.
,, c. 63. s. 23. in pt.	Sale of Food and Drugs Act, 1875.
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41 & 42 Vict. c. 16. ss. 90. and 91. in pt.	Factory and Workshop Act, 1878.
,, c. 49. ss. 57. and 60. in pt.	Weights and Measures Act, 1878.

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed by 47 & 48 Vict. c. 43.	Subject-matter of Act repealed.
41 & 42 Vict. c. 74. ss. 64. and 66. in pt.	Contagious Disease (Animals) Act, 1878.
41 & 42 Vict. c. 77. s. 37. in pt.	Highways and Locomotives (Amendment) Act, 1878.
42 & 43 Vict. c. 49. ss. 31. and 32. in pt.	Summary Jurisdiction Act, 1879.
45 & 46 Vict. c. 50. s. 227. in pt.	Municipal Corporations Act, 1882.

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(December Number.)

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The Statutes are completed, with Index, in the October Number; and the Title-page is printed in its proper place, and will be found in the June Number.

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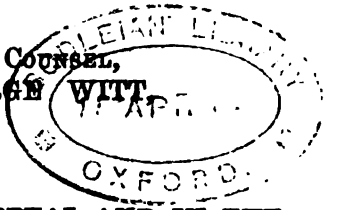

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